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INTERSTATE COMMERCE COMMISSION.

DECEMBER 24, 1900.

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THE INTERSTATE COMMERCE COMMISSION.

Hon. MARTIN A. KNAPP, of New York, Chairman.

Hon. JUDSON C. CLEMENTS, of Georgia,

Hon. JAMES D. YEOMANS, of Iowa.

Hon. CHARLES A. PROUTY, of Vermont

Hon. JOSEPH W. FIFER, of Illinois.

EDWARD A. MOSELEY, Secretary.

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REPORT

OF THE

INTERSTATE COMMERCE COMMISSION.

WASHINGTON, D. C., *December 24, 1900.*

To the Senate and House of Representatives:

The Interstate Commerce Commission submits to the Congress its Fourteenth Annual Report.

The twenty-first section of the act to regulate commerce, as amended March 2, 1889, provides that these reports "shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary." In discharging the duty thus enjoined there is set forth in the following pages a statement of the administrative work performed by the Commission during the last year, or so much thereof as seems to require detailed mention. To this is added an account of certain decisions of the Federal courts during the same period and some comments upon other matters deemed worthy of special consideration.

With reference to further legislation the Commission has little to suggest and nothing new to propose. The subject has been fully discussed in previous reports to the Congress, and recommendations both general and specific have been repeatedly made. The reasons for urging these amendments have been carefully explained, and repetition of the argument at this time can hardly be expected. While the attitude of the Commission has been misunderstood by some and misrepresented by others, the views heretofore officially expressed are believed to be justified alike by experience and reflection. They are confirmed by later and current observation. Knowledge of present conditions and tendencies increases rather than lessens the necessity for legislative action upon the lines already indicated, and in such other

directions as will furnish an adequate and workable statute for the regulation of commerce "among the several States."

There is one aspect of the situation, however, which may be briefly referred to in this connection. It must be apparent to the thoughtful mind that equal charges for equal service, reasonable alike to those who use and those who furnish the facilities of public carriage, can not be secured without some restraint upon the competitive action of independent lines. The public interest appears to be promoted by such restraint, for that interest goes, as was said by the Commission in its First Annual Report,

to the establishment of such relations among the managers of roads as will lead to the extension of their traffic arrangements with mutual responsibility just as far as may be possible, so that the public may have in the service performed all the benefits and conveniences that might be expected to follow from general federation.

For this reason agreements in respect of classification, interchange of cars, switching service, storage and terminal charges, demurrage, car-service rules, and other similar matters have been looked upon with favor as operating to public advantage. Uniform classification, for example, is regarded so desirable that the Commission has recommended and urged its adoption by voluntary action or, that failing, by compulsory legislation. Other mutual engagements of like character, within proper limits, are generally recognized as appropriate and practically essential. The act to regulate commerce seems to favor associated action by competing roads for purposes of this kind; at least, such action is in harmony with the chief objects of that law. True, it prohibited pooling—that is, the actual division of competitive traffic or the earnings derived therefrom—and even this provision is believed by many to be practically inconsistent with uniform charges to all shippers and the fair adjustment of rates between different communities and different articles of traffic.

Whatever view may be held as to the degree of incompatibility between the prohibition of pooling and the other provisions of the act, it was generally understood that mutual agreements respecting such matters as have already been mentioned, not involving the division of tonnage or revenue, were in no respect made unlawful by the terms of the act, but were regarded rather as aids to its proper observance. Accordingly, numerous associations were formed and many features of the railroad service more or less subjected to common control by carriers otherwise in actual competition. Such agreements, so far as they were observed, accomplished their object and secured uniformity of methods and charges concerning the matters which they embraced. They were presumably legal. Their invalidity could be established only by judicial determination, the effect of which did not extend beyond their abrogation. Yet many of these arrangements were con-

siderable checks upon competition, and such was the design of those who entered into them. Their tendency and the intended results of their formation were to remove the practices and charges included in their terms from the field of competition.

These conditions are said to be materially changed, in their legal aspects at least, by the passage of the antitrust law and the interpretation which that law has received. The prohibition against railway association is no longer limited to the pooling of competitive traffic or the revenue therefrom, but extends to every form of combination which directly restrains competitive freedom. This does not mean that every sort of agreement between rival roads, of the character now under discussion, violates the antitrust law, for many of them are doubtless not within the purview of that enactment. It does mean, however, that all such engagements as actually restrict competition are void from their inception and subject those who make them or who connive in efforts to continue them to the hazard of criminal prosecution. It does not follow that railway managers can ordinarily be convicted under this statute for things which have been done and continue to be done, because the form and pretense of individual action is preserved although the practical result is substantially the same as though effected by a forbidden combination.

It is evident that railroad managers generally have made no attempt to conform their practices to the spirit of this law. They may keep within its letter and succeed in avoiding its penalties, but they claim that they are virtually compelled to counteract its aim and evade its observance. Thus it happens that some of the most important and useful incidents of railway service are maintained by methods which are believed to be inharmonious with, if not in actual violation of, a Federal statute. This is more than the question of pooling contracts between rival carriers; it is the question of such agreements as relate to classification, terminal charges, and the like, concerning which uniformity, certainty, and stability are of manifest benefit and convenience to the public.

Under the conditions now existing it is inevitable that frequent discriminations should occur and endless acts of injustice be committed in the performance of railroad service and the application of railroad charges. Theoretically it is possible for each road to observe its published schedules in every particular, but this in many cases must be done, if done at all, only at the loss of needed traffic, unless all rival roads with equal strictness and honesty conform in like manner to their published schedules. And what is here said applies as well to rates of carriage as to the classification of freights, the privileges allowed to passengers, and all other matters which affect the cost or quality of the service furnished. The idea of public regulation implies certain

standards of correct conduct to which all carriers shall conform. It also implies some measure of supervision and control over those subject to its requirements, to the end that these standards may be observed and practices made to conform thereto. This, without doubt, is inconsistent, to some degree at least, with actual and constant competition as that term is commonly understood.

But if, as is alleged, that competition is compelled in all things by one law which is binding upon the carriers, it can hardly be supposed that another law of more or less diverse and opposing tendency will at the same time be obeyed. It is universal experience that capital takes advantage of competition. If public transportation can be bought and sold like a commodity, the largest purchaser will, some of the time, if not all of the time, get the best terms. It is idle to expect that railroads will actually and all the while compete with each other as to every item of service or facility and at the same time expect that all their patrons, small and large, will be treated exactly alike. Such a result has never yet been realized, and practically will not be realized. The policy now pursued can not and will not prevent an outcome of vicious discriminations. And, what is most unfortunate of all, those discriminations favor the few and place the many at disadvantage. They aid the strong, who have no need of assistance, and handicap the weak with burdens which by comparison are always unjust and often destructive.

The present state of the law and the facts here referred to have undoubtedly furnished a great incentive to the consolidation or unification of rival lines, which is at once the most conspicuous and the most significant result of current railroad financiering. Some observations on this subject are made in the following chapter on railway combinations:

RAILWAY COMBINATIONS.

One of the striking features of recent times in the industrial world has been the tendency to combine for the purpose of limiting or eliminating competition. In no branch of industry, probably, is the inducement to form combinations of this sort greater, nor the advantages to be hoped for from them when formed more certain, than in railway operations.

First. No competition is so destructive as that between railways. The reasons for this have been pointed out in previous reports of this Commission. In no other business, is mere volume of so much account in comparison with the price. The very conditions under which the traffic manager works induce him to secure tonnage at the best rate obtainable. In most kinds of business, competition stops with the bankruptcy of one or more of the competitors, but here the weak,

roundabout, bankrupt line can often inflict as serious damage as could a prosperous rival.

Second. The nature of the business renders possible large profits from such combinations without attracting undue attention. Transportation is analogous to a tax imposed in varying degrees upon almost all commodities. Generally a slight increase in the rate does not materially affect the price to the consumer. While the freight rate determines to a great extent who shall transact the business and where it shall be done, it does not usually determine whether it shall be transacted at all. With important exceptions moderate advances in rates, if equally distributed, would not be especially noticed by the public as a whole. Since every such advance adds to the net revenues of the railway, a very slight increase in all rates, if it should be permanently maintained, would enhance enormously the value of railway securities.

Third. No kind of property lends itself so readily to the permanent formation of such combinations as railroad property. A factory can be constructed at almost any point, and usually with a comparatively small outlay, to compete with other factories of the same kind, but a railway can only operate in that particular locality where it is built, and its construction is attended with very large expense. He who combines all the factories of the United States of a certain kind may lose in a short time the benefit of that monopoly by the erection of other factories of the same kind, but a monopoly created by the combination of all the railways now controlling any considerable area of the United States is reasonably certain to continue for years to come. This gives permanency to the combination and makes the investment of money in and upon the strength of it possible.

Fourth. In addition to these inducements, which arise out of the nature of the business and conditions under which it is prosecuted, the statutes of the land operate to produce the same result. Many years ago the managers of railways found it necessary, in what they believed to be legitimate self-protection, to form pooling contracts. They still believe that the right to make and enforce such contracts is a proper and essential one, but the fifth section of the interstate commerce act renders the formation of these contracts not only illegal but criminal.

The act to regulate commerce provides that carriers shall publish all rates for the interstate transportation of passengers and property, and adhere to the rates published. The antitrust act, so called, as interpreted by the courts, renders any agreement with reference to the making or the maintaining of interstate rates a crime. But if carriers are to make public their rates and to charge all shippers the same rate, they must, as a practical matter, agree to some extent with respect to these rates.

Now, when the law forbids what railway managers believe is essential to the operation of their properties, and when they believe it forbids in one act what they deem necessary to the observance of another, the obvious tendency of the enforcement of such a law is to lead to the discovery, if possible, of some way in which it can be avoided. If there can be no agreement in the operation of independent railways, it seems inevitable that there will be unity or agreement in their ownership.

We should expect, therefore, to find this same attempt at combination among railways which is observed in other kinds of business; nor is that expectation disappointed. No one at all acquainted with what is transpiring can doubt that combinations have been formed and are certain to be formed among railroads which will be more extensive, more permanent, and more far-reaching in their ultimate results than those in any other department of industry.

With respect to many of these combinations the Commission has and can have no official knowledge. A lease or a consolidation proper would appear from the financial reports made by carriers annually, but the method employed for accomplishing the purpose is not always by lease or by consolidation; more often the result is expressed by the statement that the acquiring company has "obtained the control" of the acquired line, and of such arrangements we have no particular information. The Commission is given authority "to inquire into the management of the business of all common carriers subject to the provisions of this act, and to keep itself informed as to the manner and method in which the same is conducted," but this has never been construed by it to refer to the mere financial operations of railways engaged in interstate traffic. We should, however, hardly discharge our duty in a report to Congress upon the railway operations of this country if we did not call attention to these combinations and the effect which they are likely to produce.

The thing aimed at is to stop competition. This is, of course, effectively done by lease or consolidation, through which the operation of the two properties is vested in one head; but it may also be accomplished by other means.

Since the act to regulate commerce took effect, competition, harmful from the railroad standpoint, has consisted mainly in departures from the published rate. That act requires, as is well known, that all interstate rates shall be made public and adhered to. The experience of thirteen years shows that there is no serious difficulty in securing, upon the part of competitive lines, the adoption and publication of rates satisfactory to the carrier; but hitherto, with respect to traffic which is actively competitive, it has been found impossible to secure actual observance of the rates when adopted. It is through this dis-

regard of law and by this departure from the published rate that the only real competition in respect to the rate has occurred or is likely to occur. A railway will seldom reduce the open rate unless to meet some actual or supposed departure from that rate by a rival line, for it is well understood that such a reduction by one means simply a corresponding reduction by others. In order to prevent rate competition, therefore, it is only necessary to secure a compliance with the open tariff.

This can always be accomplished when the chief executive officers of a railway company desire it. It is sometimes suggested that those in authority can not control their subordinates, but this claim will not be seriously made by one familiar with the facts. No subordinate ever takes traffic at less than the lawful rate in defiance of the honest command of his superior. If, therefore, the superior can be controlled in this respect, the entire situation is under control.

In order to do this it is only necessary that a competing line should own or control or that some person in its interest should own or control enough of the stock of its competitor to influence the election of a board of directors, and this seems to have been the method recently adopted in many instances.

It should be noticed that recent reorganizations of many weaker lines, by which large blocks of stock have been created with little present value except for the purposes of control, render it particularly easy to accomplish this form of combination. It is evident that this method of combination, if the stock interest be large enough, gives to the dominant property absolute power over the other.

It is also understood that attempts have been made to form combinations among the financial owners or managers of rival properties, having in view the same purpose of maintaining rates, but such methods are too remote. While they may produce for a time, and, in a measure, the desired result, it is not believed their effect can be permanent or extensive.

As already said, the Commission has no official knowledge of the extent of the operations above outlined. It has, however, informed itself as well as possible from unofficial sources. Disregarding mere rumors, but taking account of well-authenticated statements, like those asserting a control by the New York Central in the Cleveland, Cincinnati, Chicago & St. Louis, and of the Pennsylvania in the Chesapeake & Ohio, there were absorbed in various ways between July 1, 1899, and November 1, 1900, 25,311 miles of railway. There are in the whole United States something less than 200,000 miles of railroad, and more than one-eighth of this entire mileage was within the above period brought in one way and another under the control of other lines.

The scope and effect of these operations is perhaps best seen by referring to lines between the West and the Atlantic seaboard. As is

well understood, many routes connect these sections and competition between these different lines has in the past been extremely active. As compared with rates in other portions of the country, those between Chicago, and points based upon Chicago in the West, and the Atlantic seaboard have become extremely low, and this is especially true of those upon grain, flour, packing-house products, and other commodities, of which large quantities are transported from the West for export.

One of the strongest of these lines is the Pennsylvania, and among its most troublesome competitors in the past have been the Baltimore & Ohio, the Chesapeake & Ohio, and the Norfolk & Western. It is understood that the Pennsylvania Company, or persons in the interest of that company, have purchased, or otherwise acquired so that they vote upon, a sufficient amount of the stock of each one of these rival companies to control an election of its directors, and, therefore, to dictate the policy of the company in respect to the making and maintaining of its rates. In other words, these four lines from being active competitors for this business have become, for all practical purposes in that respect, one single road. In addition to this, it is now asserted that the Pennsylvania Company is negotiating for a lease of the Southern Railway System, comprising nearly 6,500 miles of railway south of the Ohio and Potomac rivers and east of the Mississippi. If it should acquire, by lease or otherwise, that property it would control every practical avenue by railway south of its own line between the West and the Atlantic seaboard.

The relation subsisting between the lines north of the Pennsylvania can not be affirmed with equal certainty. Here the New York Central & Hudson River is the strongest, both financially and from a traffic standpoint. That company has recently absorbed by lease the Boston & Albany; it is understood to possess indirectly a very strong stock interest in the Boston & Maine, which in turn has just leased the Fitchburg; it is asserted that very close financial relations subsist between its management and those of its competitors, the Lehigh Valley, the Erie, and the Delaware, Lackawanna & Western, and that in the near future the Central will control, or that there will be a community of interest in the financial control of, these competing lines. While this can not to-day be stated with any degree of certainty, there is nothing improbable in the suggestion. Such an arrangement is greatly to the advantage of all parties interested and is no more than has already been accomplished with respect to lines south of the Pennsylvania. Should this transpire the Pennsylvania and the New York Central, or the dominant owners in those properties, would control every considerable avenue of communication by rail between the East and the West, except the Canadian lines.

This reference to the east and west lines is made merely by way of

illustration. The same process is going on in all sections of the country. The method adopted varies and will vary in different cases, but whatever the means the main object is always the same, the suppression of competition. When we consider what has actually been done, what is undoubtedly in contemplation, the entire feasibility of these schemes, the very great advantage which would result to the owners of the properties involved, the fact that a step once taken in that direction is seldom retraced, it becomes evident that in the immediate future the main transportation lines of this country will be thrown into great groups, controlling their own territory, and not subject, with respect to most of their traffic, to serious competition.

Such a condition is not without its benefits. The evils which competition begets will largely disappear with that competition; many of the worst forms of discrimination will cease; the tariff rate will be generally observed. Competition is wasteful. Owing to it, transportation by rail actually costs more than it ought. To eliminate that competition will be to work an actual saving in the cost of the service, and this should redound to the benefit of both the carrier and the shipper.

The danger lies in the fact that the only check upon the rate is thereby removed. Hitherto, competition between carriers has kept down the price of carriage. If that is taken away nothing remains except the force of popular opinion and the feeble restraints of the present law, which are of little effect when directed against slight and gradual advances. It will lie within the power of two or three men, or at most a small group of men, to say what tax shall be imposed upon the vast traffic moving between the East and the West. One kind of property may determine what tribute every other kind of property shall pay to it. The nature of the service and the conditions under which this species of property is operated may be such that it can not be, and perhaps ought not to be, brought under the controlling force of competition, but those very conditions make it imperatively necessary that some other control should be substituted for competition. As was said by Mr. Justice Bradley in the case of *Wabash, St. Louis & Pacific Railway v. Illinois* (118 U. S., 586), a case in which the Supreme Court denied to the State of Illinois all right over an interstate rate because that power was vested in Congress alone:

But a superintending power over the highways, and the charges imposed upon the public for their use, always remains in the Government. This is not only its indefeasible right, but is necessary for the protection of the people against extortion and abuse. These positions we deem to be incontrovertible. Indeed they are adjudged law in the decisions of this court. Railroads and railroad corporations are in this category.

It is idle to say that freight rates can not be advanced. During the past year they have been, by concerted action upon a vast volume of

traffic, advanced in every part of this country. It is equally idle to say that they will not be advanced. It is both human nature and the lesson of history that unlimited power induces misuse of that power. Railways are not combining for the purpose of "extortion and abuse," but none the less should the people provide some protection against that possible result of the combination.

ADVANCES IN RATE BY CHANGES IN CLASSIFICATION.

As is well understood, merchandise is thrown into various classes for the purpose of determining the freight rate at which it shall be transported. The rate varies with the different classes, so that the change of a particular article from one class to another operates to change the rate upon that article. For example, the first-class rate from New York to Chicago is 75 cents per hundred pounds and the second-class rate is 65 cents per hundred pounds. If, therefore, a kind of merchandise which has been classified as second class is transferred to the first class, the rate upon that merchandise is thereby advanced from 65 to 75 cents per hundred pounds.

The act to regulate commerce requires that carriers shall file and make public, in a certain specified manner, their tariffs, and it is required that as a part of the publication of these tariffs the classification in effect shall be filed and published. What is known as the official classification distributes all merchandise into six classes, and this classification applies, generally speaking, in all territory east of a line drawn from Chicago to St. Louis and the Mississippi River from St. Louis to Cairo and north of the Ohio and Potomac rivers. While, however, this classification is supposed to embrace all commodities, the rate upon many of the most important articles is not usually determined by the classification, for the reason that carriers publish special commodity rates applicable to particular commodities. For instance, corn is by the official classification sixth class, and the sixth-class rate from Chicago to New York is 25 cents, but corn itself actually moves under a special rate, which, at the present time, is 17½ cents. If, therefore, the commodity rate on corn should be withdrawn, such action would result in raising the rate from 17½ to 25 cents per hundred pounds.

On January 1, 1900, carriers operating in the territory above described put into effect a new classification, known as Official Classification No. 20, which superseded the classification previously in effect, known as No. 19. The changes made by this new classification were 824, of which 818 produced an advance and 6 a reduction in the rate. The number of these changes, with the per cent of advance or reduction in the previous rate, were as follows:

Advances.

	Per cent.
434 ratings advanced	42.8
214 ratings advanced	30
100 ratings advanced	20
32 ratings advanced	15.3
17 ratings advanced	16.6
10 ratings advanced	50
6 ratings advanced	100
2 ratings advanced	25
2 ratings advanced	33.3
1 rating advanced	85.7

818

Reductions.

3 ratings reduced	30
3 ratings reduced	14.3

The average advance on the whole 818 articles was 35.5 per cent.

On March 10, 1900, certain articles were partially restored to the classes from which they had been taken, the effect of which was to reduce the average advance from 35.5 per cent to 21.2 per cent, which is at present substantially the average increase over the charges in effect previous to January 1, 1900.

For the purpose of determining the percentage of advance or reduction the New York-Chicago rate has been taken. This was for the reason that rates generally between the West and the Atlantic seaboard are a percentage of that rate, and vary, therefore, in the same proportion as that rate. Broadly speaking, the rate between New York and Chicago determines all the long distance rates between the East and the West. In case of local short distance rates the difference between different classes is sometimes more and sometimes less in proportion than the long distance rates.

The Southern Classification prevails generally, except upon the Norfolk & Western and Chesapeake & Ohio railways, in territory south of the Potomac and Ohio rivers and east of the Mississippi. On January 1, 1900, Southern Classification No. 25 was in effect. Since then three new classifications have been filed, namely, No. 26, effective February 1; No. 27, effective June 1, and No. 28, effective November 10. Comparing the last with No. 25 we find as a net result 636 changes since January 1, of which 531 worked an advance, and 105 a reduction in rates. The average advance was about 30, and the average reduction about 26 per cent.

In determining the above percentages of increase and reduction, rates from the Ohio River to Atlanta were selected, those being fairly representative of Southern territory.

The Western Classification applies in all territory west of a line from Chicago to St. Louis and of the Mississippi River from St. Louis to

the Gulf. On January 1, 1900, Western Classification No. 29 was in effect. Classification No. 30 was made effective January 25. By that 257 changes in rating were made, of which 240 were advances and 17 reductions. Taking the rate from Chicago to the Missouri River as a basis, the average advance was 47.4 per cent, the average reduction 31.7 per cent.

The articles to which these changes in different classifications apply are not only very considerable in number but important in character, embracing many of the most common articles of merchandise. It will be seen, therefore, that by such changes in classification since January 1, 1900, rates upon a considerable part of freight traffic in all portions of the United States have been very materially advanced. In addition in many cases commodity rates have been withdrawn, and the effect of this has been, as previously explained, to increase the rate upon such articles which now take the higher class rate.

The law requires that ten days' notice of advances in rates shall be given, and in obedience to this provision it is necessary to file with the Commission changes in classification which work advances in rates at least ten days before they are to take effect, but no further or other notice to the public is required. Rumors of the intended action of the railways in making changes in classification did, however, get abroad some time before it became necessary to file the classification itself, and so many complaints were received by the Commission, in consequence of the apprehension of shippers as to the effect of these changes, that an investigation was ordered in December, 1899, into the proposed action in respect to official classification territory. No investigation has ever been prosecuted into the changes in the Western Classification or the Southern Classification, but it may be assumed that the facts developed touching the official classification are typical of what actually occurred in case of the other two. Some of the salient points developed in that investigation are of public interest and for that reason stated here.

The Official Classification is in charge of what is known as the Official Classification Committee. This body consists of fourteen members, who seem to be appointed by railways in different parts of official territory, and so distributed as to fairly represent the lines operating in that territory. The members of the committee are traffic officials upon various railways and receive no special compensation for their work upon this committee. The chairman of the committee devotes his entire time to its service. He and the staff of employees who do the routine work of the committee are paid by the lines operating in official territory in proportion to the amount of freight tonnage carried.

When a change in classification is under consideration, arguments for or against it are presented to the chairman. The chairman lays

the matter before the committee and the committee decides by a majority vote whether the change shall be made. The action of the committee is, however, only recommendatory, and before the change becomes effective it must be approved by substantially all the lines interested. In case of Classification No. 20 the changes were proposed to the committee by Mr. Gill, the chairman, were approved by a majority of the committee, and were then submitted to the different railways for approval. They were approved by all the lines in interest after some discussion, and the classification was then filed with the Commission by Mr. Gill, to take effect January 1, 1900. Mr. Gill testified that this particular classification would not have been and could not have been put into effect until agreed to by substantially all the lines interested, and that the same had been at the time of the giving of his testimony so agreed to by all lines. It is evident that no classification which works an advance in rates can be put into effect without the agreement of all the competitive lines which use it.

Ordinarily articles are placed in the same class because, for various reasons, they ought to bear the same rate. When changes are made from one class to another it is because considerations exist which indicate that the particular article in question is being transported too cheaply or is paying too high a rate in comparison with other articles in the same class. The changes made by Official Classification No. 20 did not, however, proceed upon that theory. The chairman of the committee testified, in substance, that the railways for which the committee stood determined that they must increase their revenues and instructed the classification committee to make the changes in classification for that purpose. Acting upon these instructions, those articles which it was thought could best bear the increase were arbitrarily selected and advanced into higher classes.

There was little or no consideration as to whether they ought to be advanced or reduced in comparison with other articles of the same class. The only question was whether they could stand the advance. The railway witnesses all agreed in this, that the moving and only purpose in the greater part of these changes was to obtain more revenue by advancing rates. There were two ways, they said, in which this could be accomplished; first, by increasing the rate *eo nomine*; second, by changing the classification, and the latter course was adopted.

It was not claimed that these carriers were in any unusual need of revenue. Indeed, not for years had traffic been so heavy or gross receipts as large as then, but it was said upon the hearing that the cost of operation had been enhanced, notably by the advance in the price of iron and wood, and that the increased percentage of operating expenses would decrease their net revenues.

Selecting for purposes of illustration the New York Central & Hudson River, the Pennsylvania, and the Baltimore & Ohio railroads, the

percentage of operating expenses for the year ending June 30, 1900, as compared with that ending June 30, 1899, and the nine years previous is shown below:

Name of road.	1900.	1899.	Average, 1890 to 1898.
	<i>Per cent.</i>	<i>Per cent.</i>	<i>Per cent.</i>
New York Central & Hudson River R. R.	62.39	63.05	64.50
Pennsylvania R. R.	67.14	68.57	68.23
Baltimore & Ohio R. R.	65.17	77.38	72.11

From this comparison it appears that the percentage of operating expenses in case of all three roads was less for the year 1900 than for 1899 and for the average. Of course it is impossible to say what effect these advances in rate, which prevailed during the last half of the year 1900, may have had upon the result for the entire year, but when it is considered that gross receipts, and, therefore, net revenues, enormously increased during that year, it is evident that there is little in the claim that increased cost of operation justified these advances in rate.

No fair comparison in net revenues for the last ten years can be made in case of the above three railway systems, for the reason that the mileage has not been uniform, having increased in the case of all. A comparison of the net revenue per mile is much more fair, and below is given a table showing this for the years 1900, 1899, and the average from 1890 to 1898, inclusive:

Net earnings per mile of road for years ending June 30.

Name of road.	1900.	1899.	Average, 1890 to 1898.
New York Central & Hudson River R. R.	\$7,140	\$7,085	\$7,025
Pennsylvania R. R.	9,118	7,410	7,675
Baltimore & Ohio R. R.	5,378	3,175	3,477

This presents a fair comparison between the years 1900 and 1899 in case of both the Pennsylvania and the Baltimore & Ohio, since the mileage of those two systems was in those two years substantially the same. The New York Central & Hudson River took on about 400 additional miles, which are embraced in the year 1900 and not in the year 1899, and since the net earnings of these added lines were very much less than those of the original lines the effect is to reduce for the year 1900 the net revenue per mile of that system very materially. It will be seen that the Pennsylvania increased its net earnings between the last two years 20 per cent and the Baltimore & Ohio almost 75 per cent.

Again, the rates advanced were class rates and these, taking the New

York-Chicago rate as a basis, were exactly the same January 1, 1900, that they were in April, 1887, when tariffs were first filed. It will hardly be claimed that the cost of operation was greater in 1900 than in 1887, and it is common knowledge that the expense of transporting a ton of merchandise, owing to the increased size of cars and locomotives and other economies which have been introduced, has materially fallen in the last thirteen years. Of course the introduction of these improvements has in many cases increased the fixed charges of the carriers, but still, on the whole, the same service costs them less, while they charge more for it than then.

It was said with truth that the rate per ton per mile had fallen in the meantime. The average in the United States, as a whole, was 0.941 of a cent in 1890 as against 0.724 of a cent in 1899. Mr. Guilford, the traffic manager of the New York Central & Hudson River Railroad, was of the opinion that this had been due mainly not to a reduction in tariff rates, but to the fact that larger quantities of low-priced commodities are now carried by railways in proportion to the whole amount of traffic than formerly.

There seemed to be a general feeling among railway representatives that railways ought to share in the general prosperity, and this was rather admitted by some of the business shippers. Manifestly, however, that proposition tells both ways. If prosperity excuses an increase in freight rates, then business depression would require a corresponding decrease. If the good times of 1900 justify an advance, then the hard times of 1893 should have induced a fall. But, as just said, these class rates which were advanced have been the same since 1887.

It is perhaps true that the tendency previous to January 1, 1900, had been to transfer commodities from higher to lower classes rather than the reverse and that therefore these changes were in some instances restorations; but if so, this does not seem to have at all operated upon the minds of the classification committee.

The proposed changes, as developed upon this investigation, were of so great consequence to shippers, not only in advancing the rate itself, but also in altering the relation of rates, and thereby unsettling business conditions, that very many of these shippers united in a request to the railways that the taking effect of this new classification might be postponed until opportunity had been afforded them of presenting their claims and securing, if possible, modifications in the proposed changes. The railways declined to accede to this request, but said that they would consider the objections of shippers after the new classification had taken effect. The shippers thereupon insisted that the action of the railways in advancing by concerted action their rates through such changes in classification, was in violation of the antitrust act, and requested this Commission to transmit the facts

developed upon the investigation to the Attorney-General with the suggestion that he proceed under such antitrust law to enjoin the defendants from putting the new classification in effect.

This phase of the matter is fully referred to in our last annual report. By reference to that it will be seen that the Attorney-General, after examining the transcript of that investigation, was of the opinion that the action of the railways was not in violation of the antitrust law, but violated, if anything, the act to regulate commerce. This Commission had previously been forced to advise complaining shippers that under that act, as at present applied, it was powerless to afford them any effective relief.

The purpose of referring to all this is not to criticise the action of the railways in this respect, but rather to call attention to what has been done, and, thereby, to what may be done. It has been the understanding of late that the statutes of the United States prohibited the advance of interstate rates by concerted action among the carriers, yet here we find an instance where in every part of this country—for the three classifications embrace the whole United States—carriers have, by concerted action, without any notice to shippers and indeed against the vehement protest of shippers, advanced their rates upon a large portion of the merchandise carried under class rates an average of one-fourth. If this can be done with respect to that portion of railway traffic, it can be done with respect to all of it; and if rates can be advanced 25 per cent, they can be still further advanced by the same method.

It can no longer be said that a general advance of freight rates is altogether a fancy, for it has become an accomplished fact. Neither can it be said that the public can escape such an advance, however unjust. Hundreds of persons have demanded relief from what has been actually done. In some instances, where the shipper was great enough or the organization to which he belonged powerful enough, that relief has been voluntarily granted by the railways, but the general public and the small shipper have been compelled to make the best of it.

Neither is it our purpose in calling attention to this matter to suggest that the law should be so interpreted or amended as to forbid changes in classification by agreement. A uniform classification is a public necessity.

Previous to the enactment of the act to regulate commerce there were 138 classifications in territory now covered by the Official. A return to that condition would be intolerable. Moreover, the application of the act to regulate commerce practically compels carriers to adopt a uniform classification, and it would be the height of injustice to forbid by one statute the thing which another statute in effect compels. But it is equally wrong and intolerable that a classification

committee or a railway manager should be able by a stroke of the pen, without consultation with the public, without even informing the public, to arbitrarily change the rates at which freight traffic shall be handled. Carriers should have the right to agree upon a uniform classification and changes in that classification, and they should be held accountable for the just and proper exercise of that right. When hundreds of shippers complain that a public servant has perpetrated a wrong upon the public in the discharge of a public duty, there should be some public tribunal before which inquiry can be had and by which redress can be administered.

THE BUFFALO GRAIN POOL.

The Commission now has under investigation the methods of carriers in the handling of grain between points of production and consumption. In the course of the first hearing upon this investigation, at New York recently, certain facts were developed with reference to what is known as the Buffalo grain pool.

The only lines of railway which transport grain from Buffalo, N. Y., to New York City are the New York Central & Hudson River, the Delaware, Lackawanna & Western, the Erie, and the Lehigh Valley. For some years these lines have maintained what has come to be known as the New York Grain Committee, a body consisting of a representative from each one of the lines, whose duty has apparently been to meet occasionally, discuss the rate situation on grain, and probably agree as to what rates should be put into effect between Buffalo and New York. Great difficulty seems to have been experienced in maintaining the published rate between these points, owing to competition among these four lines, and last September they apparently determined to take measures to more effectively control this competition.

For this purpose they organized the committee by the election of a chairman, and agreed among themselves upon the percentage of grain traffic which each line should carry. Previously, each company had employed an agent, whose duty it was to appear upon the floor of the New York Produce Exchange, and there and elsewhere solicit grain for his road. It was now agreed that one person, the chairman of the organization, should act as the joint agent for all the lines and should represent all the lines upon the Produce Exchange. This agent was to contract and apportion the grain traffic among the different lines in accordance with the percentages which had been agreed upon. The arrangement extended to wheat, corn, rye, barley, and flaxseed, that being practically all the grain moving between those points. It did not appear that any money payment was provided from one road to the other in case its percentage was exceeded; the entire scheme looked to the distribution of the traffic.

This arrangement went into effect October 1. Previous to that time the published rate from Buffalo to New York had been 3 cents per bushel on wheat as a basis, something less on corn. These rates had not, however, been maintained, but had fallen as low as 2½ cents a bushel on wheat. Mr. Harriott, the chairman of the committee and the joint agent of the lines, a man of long experience in this grain traffic, testified that no attempt was made during October to advance the published rate, but simply to maintain that rate, and that he had been able to do this without difficulty. He testified, further, that it would, in his opinion, have been possible to maintain during that month a rate of 4 cents per bushel.

Very large quantities of grain move via the Great Lakes and thence by rail to the seaboard for both export and domestic consumption. The principal lake ports of departure for this grain are Chicago and Duluth, and the principal point of arrival is Buffalo. Grain goes to other points upon the Great Lakes, from which it is transported to other ports by other lines than the New York lines, but the great bulk of this traffic is handled through the city of Buffalo. It has generally been understood that the canal from Buffalo to New York City, while it carried a comparatively small amount of the grain traffic, determined the rate at which the railroads should carry the balance, but Mr. Harriott testified that this was not true; that the canal was not now a factor, either in the carrying of the traffic or the making of the rate; that if the railway lines advanced their rates, the canal promptly followed; that the controlling factor was competition between these railroad lines, and that if this competition could be eliminated advances in rate would only be limited by market conditions at home and abroad.

The practical effect of this arrangement has been to create a tonnage pool of the grain moving by rail between Buffalo and New York. Whether the traffic distributed by this pool falls within the jurisdiction of the act to regulate commerce, and whether, therefore, the pool itself is prohibited by the fifth section of that act, are matters about which, in advance of further investigation and consideration, no opinion is expressed. The carriers insist that this is not interstate traffic within the act. However that may be, the operation of this pool is instructive and apparently bears out what this Commission has predicted in previous reports.

First. All discrimination and favoritism between shippers are done away with. Mr. Harriott testified that since October 1 every shipper had paid absolutely the same rate upon grain between Buffalo and New York, and there is no reason to doubt the accuracy of this statement. Here, certainly, is a benefit of first importance, and one which the statute, unaided by the agreement between the carriers, has not hitherto been able to secure.

Second. All competition in respect to the rate is removed. There is no longer any discussion between the shipper and the railroad company as to the tariff. The effect of this has been to advance the rate and to give these lines the power, at their option, of still further considerable advances. Mr. Harriott testified, as already stated, that he could have maintained a basis of 4 as well as 3 cents per bushel on wheat; that, indeed, the rate which could be maintained was not determined by competition between carriers, but was a question of markets at home and abroad.

Mr. Harriott was perhaps a trifle too sanguine in his statement that competition of carriers other than those embraced in this pool would not affect the New York-Buffalo rate. The great bulk of this lake and rail traffic in grain moves through Buffalo, and the greatest difficulty in maintaining rates has probably been found to arise out of competition between rail carriers from Buffalo to the seaboard; but there is other active competition.

The St. Lawrence River affords an all-water route by which considerable quantities of grain move from the Great Lakes to Montreal, and so abroad. There are other ports upon the lakes through which this traffic can move. There would be a point undoubtedly at which the Erie Canal would again become an important carrying agency. Whether the grain itself shall move from the field of production through the Great Lakes or by some all-rail route is determined by the relative cost of transportation.

But, after everything has been said, the fact remains that the existence of this pool probably makes it possible to maintain between Buffalo and New York a rate from 1 to 2 cents per bushel higher than has in recent years actually been paid. Such may be the effect of this pool standing by itself. If other combinations could be made to eliminate competition in other directions, much greater advances would be possible. We have previously expressed the belief that arrangements of this kind might properly, in some cases, be permitted, but only after a method had been provided by which the rate when made could be actually controlled.

IMPORTANCE OF SLIGHT CHANGES IN RATE.

The thought naturally suggests itself, Is the advance of 1 or 2 cents a bushel in this rate of much consequence?

One cent a bushel applied to all the grain which moved through the port of Buffalo in the year 1899 would amount to \$1,500,000; applied to all the grain moving by rail in the United States for that year, it would have aggregated almost \$10,000,000.

An excellent illustration of the importance of these discriminations,

apparently slight as exhibited in the rate itself, was developed in the hearing of the case of *The City of Danville against The Southern Railway*, which is elsewhere referred to in this report. In that case the Commission directed a comparatively small reduction in the Danville rate as compared with the rate at Lynchburg, which is a competitor of Danville. The Southern Railway thereupon filed a statement showing what these reductions would amount to as applied to the traffic actually handled in and out of the city of Danville during the calendar year 1899. From this statement it fairly appeared that Danville, a town of 10,000 inhabitants, paid during that year at least \$50,000 more than would have been paid at Lynchburg for corresponding transportation. This little community is paying yearly a transportation tax of \$50,000 in excess of what its rival, only 66 miles away, is required to pay. Similar conditions exist in many parts of the country.

JOINT RATES AND THEIR DIVISION.

Ordinarily complaint is directed against an unreasonable rate or a wrong adjustment of rates—most frequently the latter. It has been pointed out in previous reports to the Congress that wrongs of this character can not be effectively corrected unless the regulating body has power to determine what rate or what relation of rates shall be substituted in place of the one found to be illegal.

Incidentally, in that same connection it has been observed that when the rate attacked is a joint rate, participated in by two or more carriers, no relief can be granted unless the further authority exists to determine the divisions of this joint rate which each carrier shall receive when the carriers do not themselves agree. Nothing can be added to what has been already said upon the main proposition, but certain cases now pending before the Commission are strongly illustrative of the necessity for power over divisions of the joint rate. One of these, *The City of Danville against The Southern Railway Company*, has been recently disposed of, and may be referred to in this connection.

Danville is situated 66 miles from Lynchburg, in the center of the tobacco-growing region of this country. Its principal industry is the preparation and sending to market of leaf tobacco, and it is said to be one of the largest centers of this industry in the world. In this business Lynchburg is its competitor, and Lynchburg and Danville are each competitors for the trade of the intervening region. Both the Chesapeake & Ohio and the Norfolk & Western railways pass through Lynchburg. Formerly Danville was served by several railways, one of which connected it with Lynchburg, but latterly these different lines have all been absorbed by the Southern Railway System, which

now controls, with one unimportant exception, every line of railroad connecting Danville with the outside world. When Danville was served by several independent lines its rates were somewhat higher than those of Lynchburg, but not to the same extent by any means as now. Since the Southern Railway became master of the situation rates to Danville have been maintained, and they are now very much higher than to Lynchburg.

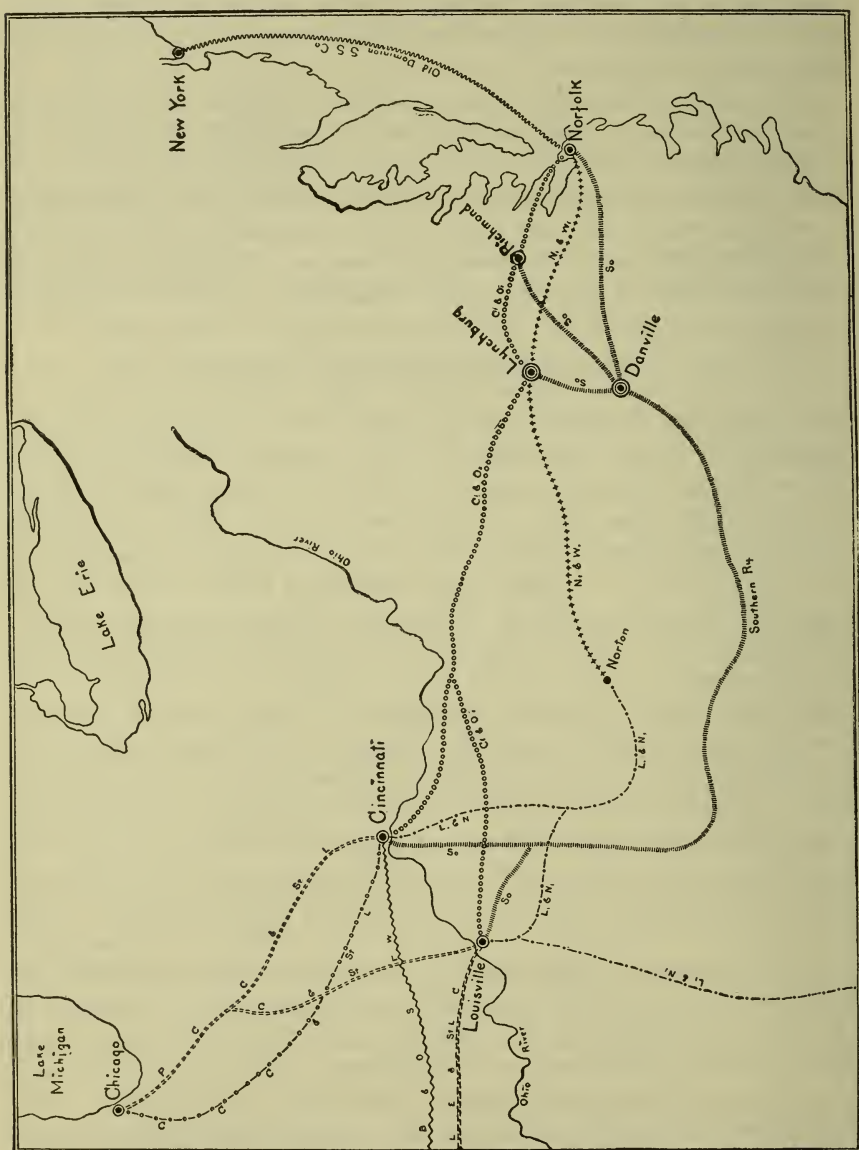
The Southern Railway, by its line from Danville to Lynchburg, connects Lynchburg with almost all points, and traffic from almost all directions passes through Danville for Lynchburg. No matter from what direction this traffic comes, whether from the north, east, south, or west, it reaches Lynchburg over the Southern road by passing through Danville, and rates from all directions to Lynchburg are very much lower than to Danville. The inhabitants of Danville complain that they are unreasonably discriminated against by these rates.

After hearing the case the Commission decided that there were certain competitive conditions which might entitle Lynchburg to a lower rate than Danville, but that they did not justify so wide a difference as is now maintained by the Southern Railway, and it ordered that railway not to make rates to Danville more than a certain per cent higher than those to Lynchburg. A consideration of the rates to these respective points will show better than any argument how impossible it is to grant any substantial relief to the city of Danville without the power of declaring divisions between the connecting carriers. For the purpose of illustration the first-class rate may be taken:

The merchants of Danville complained of rates from Louisville, Cincinnati, and the West, and the Commission held that such rates to Lynchburg ought not to exceed those to Danville by more than 15 per cent. An examination of the rates from Cincinnati—and those from Louisville are the same—shows that at present the first-class rate to Lynchburg is 62 cents, and to Danville 68 cents, and this difference does not, therefore, exceed the limit fixed by the Commission. But the merchants of Danville do not and can not profitably purchase their goods in Cincinnati. They desire to buy where their competitors of Lynchburg buy, and this appears to be largely in the markets of Chicago. It is therefore the Chicago rate which is of importance. Traffic for both Lynchburg and Danville may, and in fact does, almost entirely pass through the cities of Louisville and Cincinnati. We should naturally expect, therefore, that the discrimination in case of Chicago would be no more marked than in that of Cincinnati. Such is not the fact.

The first-class rate from Chicago to Lynchburg is 72 cents and to Danville \$1.08, showing a difference of 36 cents, while the difference

in case of Cincinnati is only 6 cents. The point to which attention is directed will be more clearly understood by referring to the following diagram, which indicates what may be, and usually is, the course of this traffic:



By referring to the above diagram it will be seen that traffic from Chicago may pass to either Cincinnati or Louisville and from thence to Lynchburg and Danville. The local rate from Chicago to Louisville and Cincinnati is the same, and the rates from Louisville to Lynchburg

and to Danville are the same as from Cincinnati. The distance from Chicago to Cincinnati is about 300 miles; from Cincinnati to Lynchburg, by the Chesapeake & Ohio, 474 miles; from Lynchburg to Danville, 66 miles.

Assume, now, that 100 pounds of first-class merchandise are transported to Lynchburg over the Big Four from Chicago to Cincinnati and the Chesapeake & Ohio from Cincinnati to Lynchburg. The total rate is 72 cents, and of this the line north of Cincinnati receives 23 cents and the line from Cincinnati to Lynchburg 49 cents. Now, if the same 100 pounds of merchandise are transported to Danville via Lynchburg, the line to Cincinnati receives 40 cents, the Chesapeake & Ohio from Cincinnati to Lynchburg 32 cents, and the Southern, from Lynchburg to Danville, 36 cents. For the same service the carrier to Cincinnati receives 40 cents if the business is intended for Danville, and only 23 cents if for Lynchburg, while the carrier between Cincinnati and Lynchburg receives 32 cents on Danville business and 49 cents on Lynchburg business. On Danville business the Southern Railway receives 36 cents for 66 miles as against 32 cents to the Chesapeake & Ohio for 474 miles.

If this same hundred pounds had moved from Chicago via Louisville and the Southern Railway from Louisville, the carrier from Chicago to the Ohio River would have obtained 26.9 cents in each case, while the Southern Railway would have received 45.1 cents for a haul of 722 miles to Lynchburg and 81.1 cents for a haul of 656 miles to Danville.

The discrimination against Danville is most burdensome upon low-priced commodities like grain and flour. Rates upon these articles continually fluctuate more or less, but when the opinion in the Danville case was prepared the flour rate from Chicago to Lynchburg was 19 cents, to Danville 31 cents. It cost the merchant in Lynchburg \$57 to transport a minimum carload of flour from Chicago to his place of business, 774 miles, and it cost the Danville merchant \$93 to convey the same carload of flour to his place of business, 66 miles more distant. In case this traffic moved through Cincinnati to Lynchburg, the carrier down to the Ohio River and the Chesapeake & Ohio from Cincinnati to Lynchburg received exactly the same division whether the flour was intended for Lynchburg or for Danville.

It is evident that these divisions, differing as they do with different routes and with different commodities by the same route, are entirely arbitrary, are matters of contract between connecting carriers, and depend upon competitive conditions. It is further evident that if there is to be any control of the rate from Chicago to Danville, the Commission, or the court which controls it, must have power over the divisions of that rate. It is not enough to be able to say to these carriers, "You must agree;" there must be the further authority to determine the basis of such agreement, provided the carriers them-

selves can not or will not determine it. Some one must have authority to say whether the carrier from Chicago to the Ohio River shall receive almost twice as much for the same service when the commodity transported is for Danville as when it is for Lynchburg, 66 miles nearer; whether the Southern road shall receive almost twice as much for the shorter haul to Danville as it does for the longer haul to Lynchburg through Danville.

Another complaint just received by the Commission illustrates another phase of this same matter. For a long time the rate on lumber from Fort Fairfield, Me., to Providence, R. I., has been \$47.55 per carload. Very recently this rate has been advanced to \$54.75 per carload, an advance of \$7.20. A shipper between these points complains that the new rate is unreasonable, and inquiry reveals the following reason for the advance:

This traffic may come by two different routes from Fort Fairfield to Worcester, Mass., from which point it must go to Providence over the New York, New Haven & Hartford Railroad. The division received by lines north of Worcester has been for many years \$39.75, and the New York, New Haven & Hartford has accepted as its share of the through rate \$7.80. That road now insists that this proportion, in consideration of its terminal facilities in Providence, is too small, and asks its connections to give it a larger division. This they decline to do, and thereupon the New Haven road notifies them that it will not in the future receive lumber at Worcester for delivery at Providence for less than \$15 per carload; whereupon the connections north of Worcester add to the division which they have long received down to Worcester \$15 and publish a new rate which is an advance of \$7.20 upon the old rate.

These railroad companies find it impossible to agree among themselves as to their divisions, and the result is that the public pays an increased rate. Now, if the new rate is unreasonable, and the fact that a lower one has for many years existed indicates that it may be, how can it be corrected unless the correcting tribunal has authority, not merely to determine the reasonableness of the entire through rate, but also the proportions in which that rate should be fairly distributed between the connecting lines if they do not themselves agree?

This matter of joint rates and their divisions, while it has not received much attention up to the present time, will be found ultimately of first consequence. Shippers are mainly interested in joint rates. The bulk of the transportation in respect of which the rate is of the greatest consequence is probably carried upon joint rates. If these rates are to be regulated authority must be given over their divisions. It is possible that such authority exists now, but the carriers deny this, and the importance of the subject should not be overlooked.

WORK OF THE CLERICAL FORCE.

The routine and miscellaneous work of the Commission, or that part of it which is mainly performed by the clerical force, shows gradual and, in some directions, considerable increase from year to year. Taken as a whole, it is materially greater now than at any previous time. Nevertheless, the total number of clerks has been reduced from 134 on June 30, 1896, to 121 on June 30, 1900. This reduction was effected without the discharge of any competent and deserving employee, and is explained by the fact that in most cases it was not found necessary to fill vacancies occasioned by death, resignation, and transfer to other branches of the public service. The ability of a smaller number of clerks to properly and promptly dispose of a greater volume of business results from better organization, improved and systematic methods, and the increased efficiency of employees who have become experts in their several lines of employment.

The general statement above made is illustrated by comparative figures from the division in charge of the auditor. The work of this division pertains to the care of tariffs, certificates of concurrence, contracts, and various papers relating thereto, filed by the carriers, including the recording and acknowledgment of all papers filed, the examination, correction, filing, and indexing of tariffs, comparison of rates, classifications, etc., furnishing statements of rates and other information contained in the documents filed, and conducting the correspondence incident to these matters.

The following table shows the number of papers received and transmitted by this division during the five years ending November 30, 1900:

	1896.	1897.	1898.	1899.	1900.
RECEIVED.					
Rate schedules	131, 597	117, 997	105, 686	123, 274	122, 824
Certificates of concurrence	292, 679	274, 600	271, 271	344, 469	316, 834
Letters of transmittal	49, 492	51, 908	47, 051	50, 519	48, 251
Correspondence	16, 188	8, 776	10, 110	10, 776	8, 950
Contracts	20	11	12	9	14
Telegrams		2, 577	2, 301	2, 786	1, 742
	489, 976	455, 869	436, 431	531, 833	498, 615
TRANSMITTED.					
Receipts	342, 171	326, 508	318, 322	394, 998	365, 085
Correspondence	6, 035	7, 997	7, 983	9, 155	8, 877
Requests for tariffs	3, 801	2, 846	2, 077	2, 639	2, 486
Requests for certificates	20, 452		19, 749	9, 175	
Memorandums	207	226	118	196	201
	372, 666	337, 577	348, 249	416, 163	376, 649
Total received and transmitted	862, 642	793, 446	784, 680	947, 996	875, 264

The following table shows the total number of papers filed, the number of clerks employed, and the average number of papers handled by each clerk during the same period:

Year.	Number received.	Number of clerks employed.	Average number to each clerk.
1896.....	489,976	63	7,777
1897.....	455,869	53	8,601
1898.....	436,431	46	9,487
1899.....	531,833	46	11,561
1900.....	498,615	44	11,332

Prior to 1895 the important work of rate indexing was continually in arrears, and during the years 1895, 1896, and 1897 it was virtually abandoned. In 1898, however, the ordinary file work had been so far reduced under new methods as to again allow the assignment of a small corps of clerks to the rate indexes, and the number thus employed has been gradually increased as the varying conditions of the work permitted. The tariff files of the office have been reviewed and practically all of the effective tariffs indexed, and at the same time all of the ordinary file work has been performed and a considerable amount of new work accomplished.

A most important result of the methods pursued in the last three years is a great improvement in the construction of tariffs, the arrangement of the contents thereof, and their general conformity with the requirements of law and the orders of the Commission. It is now possible to handle tariffs more rapidly and to locate them with greater ease and certainty than ever before, and a careful examination and comparison of tariffs with previous issues is made immediately upon their receipt in the office, which was impracticable under the old system of filing. For this reason carriers can be and are at once notified of all delinquencies and required to amend or reissue their tariffs as may be found necessary.

In other divisions similar results have been attained, the general fact being that more and better work is now accomplished with a somewhat smaller number of clerks than was formerly required. It is the belief of the Commission that its present clerical force compares most favorably in faithfulness and efficiency with that of any other department.

The names and compensation of the persons employed by the Commission and a statement of all expenditures during the last fiscal year are set forth in Appendix A to this report.

COMPLAINTS.

During the year 639 complaints of unlawful rates and practices of railroads have been filed with the Commission by shippers and ship-

ping organizations. These complaints are stated in Appendix C hereto. Many of them refer to the increases in classification, and consequently in rates, which have been made by the carriers throughout the country since our last report was submitted. The others generally allege excessive and preferential rates and discrimination or prejudice in the provision of transportation facilities. In addition to the above, two general investigations have been instituted by the Commission upon its own motion.

These 639 complaints include informal as well as formal proceedings. Of the informal investigations some presented matters not within the jurisdiction of the Commission. Others appeared after examination to involve matters which could not be adjusted by correspondence, and in these cases the complainants were advised that authoritative rulings could only be made upon regular complaint and formal hearing. The number of this class of complaints was 430. This includes numerous complaints filed during the year against the changes in freight classification made by carriers, as above mentioned, and which are also discussed in another part of this report. But few of this large number actually reached the formal stage, however, and in the great majority of cases the reason why the complainants did not follow that course was doubtless on account of the defective state of the law. They presented their grievances to the Commission in the hope that some relief might come from its mediation, but that failing they were unwilling to undertake the trouble of preparing and presenting their cases in regular trial before a Commission, which as the law now stands, is without power to provide an adequate remedy and unable in any case to have its order promptly enforced.

Eighty-three complaints were satisfied as the result of investigations by the Commission and 34 are still pending.

The importance of these informal investigations by the Commission has not been fully appreciated. Many of them involve difficult examinations of tariffs and voluminous correspondence extending over considerable periods. When a shipper considers himself aggrieved on account of some transportation charge or practice, the adjustment of related rates, or failure on the part of the railroad company to provide usual or necessary transportation facilities, he writes to the Commission, stating the situation in his own way, and the Commission, having on file in its office all tariffs and rules and regulations governing interstate traffic by railroad, proceeds with the investigation. It frequently happens that the shipper is mistaken as to the facts or misunderstands the effect of the situation, and when that becomes apparent he is so informed by the Commission. On the other hand, the papers in the informal investigation may indicate a case for the shipper, but in which the carrier, for reasons of its own, refuses to afford relief, and when this happens the shipper must institute a formal proceeding or con-

tinue to bear the unjust burden. Nevertheless, as above indicated, a large percentage of the grievances so presented to the Commission are removed by means of these investigations.

FORMAL PROCEEDINGS BEFORE THE COMMISSION.

Twenty cases have been formally instituted before the Commission since the last report to Congress. Such proceedings directly involve some of the rates and practices of 102 carriers. Following is a short statement of the complaints and the provisions of the law claimed to be violated:

570. Unlawful rates on buggies, carriages, and other commodities from Chicago, Ill., and Jackson, Mich., to San Bernardino, Cal. Sections 1, 3, and 4.

571. Wrongful classification of marble and granite blocks, slabs, tombstones, and monuments in less than carload lots by Official Classification No. 20. Sections 1, 2, and 3.

572. Unreasonable and unjust rates for transporting passengers and sample goods in a private car from St. Paul, Minn., to Portland, Oreg., stopping from point to point en route. Reparation claimed. Sections 1, 2, and 3.

573. Wrongful classification of common soap in carload and less than carload lots. Sections 1, 2, and 3.

574. Unreasonable rates on wheat, corn and oats from Berwyn, Ind. T., to Galveston as compared with rates from Ardmore, Ind. T., to Galveston. Sections 1, 2, and 3.

575 and 576. Refrigerator cars for transportation of oranges, lemons and other fruits and vegetables from southern California to Eastern markets. Excessive charges for refrigeration. Arbitrary routing of shipments of citrus fruits. Pooling. Sections 1, 3, and 5.

577. Wrongful classification of marble and granite blocks, slabs, tombstones and monuments in less than carload lots by Official Classification No. 20. Sections 1, 2, and 3.

578. Unlawful freight rates from Boston, Providence, New York, Philadelphia, and Baltimore to Birmingham, Ala. Sections 1, 2, 3, and 4.

579. Unlawful freight rates from New York, Cincinnati, Chicago, Louisville, Evansville, Nashville, and New Orleans to Tifton, Ga., and discrimination in favor of Albany, Cordele, Americus, Dawson, Macon, Brunswick, and Valdosta. Sections 1, 2, and 3.

580. Charging higher than the published rate on shipment of dressed granite from Chester, Mass., to Bassetts, Wis. Reparation claimed. Sections 1, 2, 3, and 6.

581. Unlawful rates on poultry and eggs from Gallatin, Tenn., to New York. Reparation claimed. Sections 1, 2, 3, and 4.

582. Unreasonable rate on carload of potatoes from Gilbert, Mich., to Orange, N. J. Reparation claimed. Sections 1 and 6.

583. Failure to deliver carload of potatoes shipped from Hobart, Mich., to Jacksonville, Fla. Reparation claimed. Sections 2 and 3.

584. Unreasonable rate on carload of potatoes from Hobart, Mich., to Orange, N. J., and unlawful demand of vouchers before investigation and settlement of claim. Reparation claimed. Sections 1 and 6.

585. Failure to comply with shipping directions on shipment of carload of potatoes, and failure to give shipper receipt or bill of lading. Reparation claimed. Sections 2 and 3.

586. Damage in transit and failure to deliver shipment of beans to Sheridan, Ind., and produce to Macon, Ga. Reparation claimed. Sections 2 and 3.

587. Investigation by Commission in the matter of underbilling and misrepresentation of freight.

588. Investigation by Commission in the matter of rates, facilities, and practices applied in the transportation, handling, and storage of grain carried from Western points to Atlantic seaboard and other Eastern destinations.

No formal applications for relief from the operation of the fourth section (long and short haul clause) were filed during the year.

HEARINGS AND INVESTIGATIONS.

Hearings and investigations of alleged violations of the act to regulate commerce have been had at general sessions of the Commission at its office in Washington, D. C., and at special sessions held in Norfolk and Omaha, Nebr.; Phoenix, Ariz.; San Bernardino, Los Angeles, and San Francisco, Cal.; Portland, Oreg.; Seattle, Wash.; Denver, Colo.; St. Louis and Kansas City, Mo.; Cincinnati, Ohio; Ardmore, Ind. T.; Danville, Va.; Tifton, Ga.; Birmingham, Ala.; New York, N. Y.; Boston, Mass., and Chicago, Ill. The formal proceedings so heard and investigated involved the following matters:

Rates in both directions between Denver, Colo., and the Pacific coast and between Denver and the East. Demurrage charge and failure to deliver in accordance with bills of lading. Rates from Northern and Eastern cities and from New Orleans to Danville, Va., as compared with rates to Lynchburg, Va., and rates between the West and Danville as compared with those between the West and Lynchburg. Coal rates from West Virginia mines to Cincinnati. Freight rates between New York, Chicago and St. Louis and Phoenix, Ariz., and discrimination based on comparison with rates to and from Maricopa and Pacific coast points. Differences between carload and less than carload rates from St. Louis and points east thereof to Pacific coast destinations and higher charges to intermediate than to Pacific coast points. Rates

from Chicago, St. Louis, and other points to Norfolk, Nebr., as compared with rates to other Nebraska points. Routing of lumber from Ruston, La., to Council Bluffs, Iowa, contrary to direction of shipper. Rates on coal from Myrick, Mo., to Kansas and Nebraska points. Rates on buggies and carriages from Chicago, Ill., and Jackson, Mich., to San Bernardino, Cal. Charges for transporting passengers and sample goods in private car from St. Paul, Minn., to Portland, Oreg., with stoppages en route. Classification of common soap in carloads and less than carloads. Rates on wheat and corn from Berwyn, Ind. T., to Galveston, Tex., as compared with rates from Ardmore to Galveston. Refrigerator charge on oranges, lemons, and other fruits and vegetables from southern California to Eastern markets; refrigerator cars; pooling. Freight rates from New York, Cincinnati, Louisville, Evansville, and New Orleans to Tifton, Ga., and discrimination based on comparison with rates from such points to Albany, Cordele, Americus, and other Southern points. Rates on potatoes from Gilbert, Mich., to Orange, N. J. Loss of carload of potatoes between Hobart, Mich., and Jacksonville, Fla. Overcharge on shipment of potatoes from Hobart, Mich., to Orange, N. J. Alleged pooling and refusal to settle claims without surrender of vouchers and bills of lading. Investigation in the matter of underbilling and misrepresentation of freight. Investigation in matter of rates, facilities, and practices applied in the transportation, handling, and storage of grain carried from Western points to Atlantic seaboard and other Eastern destinations.

CASES DISPOSED OF DURING THE YEAR.

THE DANVILLE CASE.

This case was brought by the city of Danville, Va., and merchants doing business in that city against the Southern Railway Company and others in 1899. It was submitted for decision October 27, 1899, and decided February 17, 1900. Danville, 66 miles south of Lynchburg, is an intermediate point to Lynchburg on the Southern Railway for all traffic to and from the West, from New Orleans, and from the East via Norfolk. The complaint alleged that Danville was unlawfully charged higher rates than those in force to Lynchburg, as follows: Freight rates generally to Danville from Northern and Eastern cities; rates on sugar, molasses, rice, and coffee from New Orleans to Danville; freight rates generally from certain Western points to Danville; the rate on tobacco from Danville to Western destinations. The case therefore involved the proper relation of such rates to Danville and Lynchburg from the North and East, the South, and to and from the West, and it was tried before the Commission under the third sec-

tion, or undue-preference clause, of the law, and the fourth section, or long and short haul clause.

A short time prior to the decision of this case the Commission decided the case entitled *City of St. Cloud v. Northern Pacific R. Co.* (8 I. C. C. Rep., 346.) The decision of that case stated the duty devolving upon the Commission under the long and short haul clause, and subsequent to that decision, but before this Danville case was disposed of, the United States Supreme Court announced its opinion in *Louisville & Nashville R. Co. v. Behlmer* (175 U. S., 648), in which the court considered the same question. This decision in the Behlmer case confirmed the Commission in the conclusion it had reached in the St. Cloud case. The carriers contended in this Danville case that if competition is found by the Commission to exist at the longer-distance point, that of itself creates the dissimilarity in circumstances and conditions under section 4 and makes it entirely a question of policy on the part of the carrier whether it will meet such competition. This is contrary to the ruling of the Behlmer case, in which the Supreme Court said:

If it were true, as asserted in the argument for the appellee [the railroad company] that where the inherent character of the competition was of a nature to be taken into consideration, any competition, however remote and unsubstantial its influence on rates and traffic, would be sufficient to bring about dissimilarity of circumstances and conditions the question would be easy of solution, for then to weigh the testimony would involve no serious duty. But this suggestion rests upon an entire misconception of the adjudications of this court.

In our decision of the Danville case we said:

Under our original interpretation of the fourth section the duty of this Commission in determining whether that section had been violated was a comparatively simple one. We were confined to inquiring whether competition between carriers not subject to the act to regulate commerce influenced or controlled the rate at the more distant point. If it did, that created the dissimilar circumstances and conditions. Now, however, we are bidden to examine the whole situation, and to determine whether, taking all things into account, the conditions which surround that situation justify the charging of the higher rate at the intermediate point. It is impossible to apply to the solution of that question any definite rule.

The Commission understands that its duty is to consider the interest of the producing market, the consuming market, and the carriers, and upon the whole determine whether there is such dissimilarity of circumstances and conditions as justifies the rates in question.

The Commission held that under all the circumstances and conditions the rate to Lynchburg may properly be somewhat lower than the rate to Danville, but we did not think that the existing difference in rates was justifiable. In other words, the circumstances and conditions did not justify the rates in force. It was our opinion that rates from Northern and Eastern cities to Danville, and rates from New Orleans, upon the commodities mentioned in the complaint, to Danville should not exceed

those to Lynchburg by more than 10 per cent, and that rates between Danville and the West should not exceed those between Lynchburg and the West by more than 15 per cent.

Our conclusion being as above indicated, the question arose, What order could be made? We found that the circumstances and conditions were different at Danville than they were at Lynchburg, and that such difference might justify a higher rate at Danville, but that there was no such dissimilarity of circumstances and conditions as would justify the existing rate.

The decisions of the United States Supreme Court leave our power, under the fourth section, in such a case somewhat doubtful. That court has decided, apparently, that the question is not merely whether there is a difference in circumstances and conditions, but whether there is a sufficient difference to warrant the lower rate at the more distant point. The same reasoning would apparently lead to the conclusion that we might inquire whether the circumstances and conditions were so different as to warrant the rate actually in effect. We held that the interpretation last suggested is the true one, and that, inasmuch as the rates considered by us were not justified by circumstances and conditions, they were unlawful under the fourth section. The question was not perhaps of much practical importance. The complaint alleged that the defendant by maintaining these rates not only violated the fourth but also the third section of the act, in that it created and continued an unjust discrimination against Danville as compared with Lynchburg. We found that the discrimination existed. We also found that it was without justification. It was, therefore, an unjust discrimination under the third section, which must be prohibited. There is some question as to whether the Commission has power to determine definitely for the future the relation in rates which should exist between Danville and Lynchburg, but we said that unless these rates were adjusted in substantial accordance with the views expressed in the decision, we should attempt to do so.

It appeared in this case that the Southern Railway is a consolidation of numerous independent railway companies, and has become, through this process of growth, a great railroad system embracing a mileage of more than 6,000 miles. In this operation properties which were almost worthless have been put together to form a valuable whole. This, the Commission said, is a perfectly legitimate enterprise, which has benefited the whole territory affected thereby; and while those who conceived and executed it have no right to exact a return upon an extravagant capitalization, whatever has honestly and in good faith gone into the enterprise should be protected. But we further said that the people living in such territory are also entitled to protection, and the Southern Railway, by virtue of the fact that it has obtained possession of and now controls the avenues of communication by rail

between the city of Danville and the outside world, has no right to deprive that community of the competitive advantages which the enterprise of its citizens, in one way or another, has secured, and upon the strength of which business conditions have grown up; it must recognize the geographical position and the commercial importance of the city of Danville.

The method of making rates from the West into Southern territory was an important consideration in this case. Under the system in use by the carriers, the rates on traffic from St. Louis, Chicago, and other points to Danville are the sums of locals to and from the Ohio River, and the rates from the same points to Lynchburg are made on a much lower joint-rate basis. We held that this method of making rates to Danville is utterly unreasonable. No opinion was expressed in regard to the system as a general scheme; but we said that if the carriers desired to make rates in that manner they must so adjust charges as not to annihilate the city of Danville; that rates to Danville must be adjusted with relation to rates to competitive localities, like Lynchburg, and that the carriers from the point of origin to the point of destination should prorate in these rates if they participate in either Lynchburg or Danville business.

A similar view applied on shipments from New Orleans. We said that in determining the Danville rate from New Orleans and western points of shipment, the Southern Railway, which dominates the situation, should, instead of adding to the rate to Lynchburg the local back from Lynchburg, recognize that the business is through business upon which Lynchburg, a competitor of Danville, enjoys a low through rate, and upon which Danville itself is entitled to a through rate.

The system of rate making in the South is constructed upon a theory which uniformly involves higher rates to intermediate noncompetitive points. The Commission does not approve that system and has often had occasion to condemn it. It believes that it ought to be and could be entirely eradicated with profit to the carrier and justice to the public. But values and commercial conditions have, in a measure, adjusted themselves to it, and we said in this case that the Southern Railway could not deal with this proposition alone. Unless its revenues are to be very greatly diminished, it must raise the competitive rate when it reduces the noncompetitive rate. The Commission said that it could not raise the competitive rate without the concerted action of its competitors, and that such action is apparently forbidden by the statutes of the United States. We could apply no rule at Danville which we were not prepared to apply to other points similarly situated south of Danville; otherwise, by removing the discrimination against Danville, we might simply create a new discrimination in favor of Danville and against some other community. It was necessary, therefore, in determining the rule for Danville to have in mind the effect

which a further application of that rule might have upon the revenues of the defendant.

It was believed that the required readjustment could be more satisfactorily made by the carriers themselves than by the Commission, and issuance of an order in this case was suspended until May 1, 1900. Prior to that date the Southern Railway Company filed a petition for rehearing. This petition was dismissed in a report and opinion filed on November 17, 1900. The company claimed that compliance with the decision of the Commission would result in great loss of revenue, amounting to over \$26,000 at Danville, and, owing to changes made necessary at 312 other points by reductions in the Danville rates, to over \$433,000 on the whole system. This alleged great loss, claimed as the result of our decision, was arrived at in a peculiar way. The rates to intermediate points between the west, south, and east and Danville were higher than the rates in force to Danville, and in estimating its loss the company assumed that it would be obliged not only to reduce these intermediate rates as much as the Danville rate would be reduced, but it would have to make them not higher than the new Danville rate. Thus, Milton, a point 14 miles east of Danville, takes a rate from eastern cities of 74 cents, first class, while the rate to Danville is 66 cents. The reduced rate to Danville under our decision would be 59 cents. The company claimed that it must also reduce the Milton rate to 59 cents, although it had been and was charging Milton 8 cents more than the rate to Danville.

The company took the position that there are certain competitive conditions at Lynchburg which justify the making of the present rate at Danville, and which also justify higher rates at intermediate points east, south, and west of Danville; that these conditions do not justify the rate proposed by the Commission; that, so long as the Southern Railway gives Danville the rate which conditions justify and require, that company can also justify a higher rate to other intermediate points, but if it puts in at Danville a rate not justified by conditions, then it has no excuse for maintaining an intermediate rate above the Danville rate; that these conditions do not justify the rate proposed by the Commission, and the Southern Railway could not, therefore, excuse its higher intermediate rates.

It is said in the opinion that railway men are inclined to assume, practically, if not theoretically, that railway competition is the only factor which enters into the justifiableness of these rates, and that they alone are to determine the weight of this competition in the making of those rates. The Commission says that such is not the holding of the United States Supreme Court. That tribunal declares that such competition is a single factor, to be considered along with other factors in determining whether the rates in question are in violation of the act to regulate commerce. Not merely the competition between railways,

not alone the interest of this Southern Railway Company, but the interest of the communities affected as well must be considered in determining whether these rates are right or wrong. Nor is the traffic manager the sole judge of what the effect of this competition should be. He must determine in the first instance, but from his determination an appeal lies to this Commission and afterwards to the courts. When this Commission, upon a hearing of the whole case and upon a balancing of the interests of all parties concerned, determines that a particular rate is just, that a given effect should be allowed these competitive conditions, that rate is *prima facie* right. It may turn out upon revision by the courts to be wrong, but in the first instance it must be assumed to be correct. If, therefore, the company should put in force the rates suggested by the Commission, it does not name an arbitrary rate unjustified by conditions, but, upon the contrary, a rate exactly justified by conditions as interpreted by the tribunal expressly created for the decision of that question.

Of course certain other rates besides those at Danville would probably be affected by the decision of the Commission, but the changes would be quite insignificant, both in number and in amount, in comparison with those suggested by the railway company. We could see nothing in the showing made as to necessary reductions at points other than Danville requiring a reconsideration of our original opinion. The showing as to Danville itself stood somewhat differently. The carrier filed a detailed statement. Although some of the existing rates from the west to Danville were somewhat lower than those proposed by the Commission, this statement showed, using the traffic from Louisville to Danville for illustration, that the company earned from this source \$6,104.31, and that had the proposed rates been applied there would have been a reduction in its revenues from this source of \$7,336.40. In other words, under the proposed rates the company would, according to this statement, have received nothing whatever for its services and would have paid \$1,232.09 for the privilege of transacting the business. This statement was furnished after the close of the testimony, and no opportunity was afforded for examining the officials of the railway company as to the manner in which the tables were compiled.

No intelligent opinion could be formed, therefore, as to the exact species of traffic or mathematical process which had been resorted to for the purpose of reaching such astonishing conclusions. It did appear from the testimony offered on the motion for rehearing that the computations there presented were based upon the theory that the entire reduction was borne by the Southern Railway and none of it by its connections in most instances. The Commission said at the conclusion of the original opinion that, while dealing with the Southern alone, that company would not be required to bear more than its fair

proportionate share of the proposed reductions, and that if its connections refused to participate in the modified rates we would endeavor to find some way of compelling them to do so.

After comparing the rates proposed with those in force and noting the slight reductions which would be required, we said in our opinion upon the motion for rehearing that we still thought the changes suggested were not extravagant, and could find nothing in the testimony to convince us that a proper readjustment upon the basis suggested would seriously diminish the revenue of that company.

THE HAMPTON CASE.

On March 10, 1900, the Commission decided the case of the board of trade of the city of Hampton, Fla., against the Nashville, Chattanooga & St. Louis Railway Company, Western & Atlantic Railroad Company, Central of Georgia Railway Company, and the Georgia Southern & Florida Railway Company. Hampton complained that freight rates from St. Louis, Nashville, and Chattanooga were unlawfully higher to Hampton than for the longer distance through Hampton to Palatka, Fla. It appeared that the rates to Hampton were combinations of the through rates for the haul through Hampton to Palatka and the local rates from Palatka back to Hampton. We said in our opinion that the result of this system of rate making, which is so prevalent in the Southern States, is to enable the merchants at Palatka to compete with merchants at Hampton at their own doors on equal terms, while the latter are debarred from such competition with the former, and as to territory between the two localities, Palatka merchants are given such an advantage in rates as to enable them to undersell Hampton merchants.

This system of rate making results in one of the principal evils which the act to regulate commerce was designed to remedy. Palatka is located on the St. Johns River, and the fact that there is more competition by rail at Palatka than at Hampton may justify rates somewhat lower than to Hampton, but the Hampton rates should not be higher than the Palatka rates by the locals from Palatka to Hampton; and in fixing the Hampton rates the carriers are bound to take into account the interest of the community at Hampton as well as its own interest, and they must not put in rates to Hampton which prohibit its citizens from the transaction of business in competition with Palatka. The Commission ruled, upon the whole case, that the Hampton rates were in violation of both the fourth and third sections of the act, but that Hampton rates may properly be made higher than the Palatka rates by the differentials now existing between the Palatka and Jacksonville rates, which were found and stated in the opinion. The carriers were given until May 1 last to readjust their rates in accordance with that conclusion. The defendant carriers having failed to obey the order within the time mentioned, the Commission instituted a pro-

ceeding to enforce its decision in the circuit court for the southern district of Florida.

A feature of some importance in this case was that the higher rates to Hampton were maintained not because they were inherently reasonable, but because of the objection to their reduction by carriers operating in that territory other than the Georgia Southern & Florida road, which delivers the traffic at Hampton; and the testimony indicated further that there was a "base line" arbitrarily fixed by the carriers extending from Jacksonville along the line of the Florida Central & Peninsular road through Lake City as far west as Live Oak; and it was agreed between the carriers that the territory in Florida south of that line should not be entered from points west of the line except upon certain rates called "specifics" or "arbitraries." Hampton is south of the "base line," and its rates were fixed under this agreement, the object of which, as shown by the testimony, was to maintain rates as agreed upon, or, in other words, prevent their reduction. But for this agreement, the Hampton rates might be made lower than they are by the normal force of competition between the two rail lines reaching Hampton, and, as the testimony shows, they would have been made and maintained not higher than the Palatka rates by the Georgia Southern & Florida road.

The adjustment of rates to Hampton, Palatka, and other points in this territory is not, therefore, the result of competition, but of concert or agreement between the carriers. In what is known as the Chattanooga case (99 Fed. Rep., 52) the circuit court of appeals, sitting at Cincinnati, discussed a similar situation, saying:

The interstate commerce law was enacted to encourage *normal* competition, but it is not in accord with the spirit or letter of that law to recognize, as a condition justifying a discrimination against one locality, competition at a more distant locality, when competition at the nearer point is stifled or reduced, not by *normal* restrictions, but by agreement between those who otherwise would be competing carriers. The difference in conditions thus produced is effected by a restraint upon trade and commerce, which is not only violative of the common law, but of the so-called Federal antitrust act.

THE KEARNEY CASE.

The case entitled *Gustin v. Burlington & Missouri River Railroad in Nebraska et al.*, was decided by the Commission on March 9, 1900. This case involved higher rates on sugar from San Francisco, Cal., to Kearney, Nebr., than those in force from San Francisco through Kearney to Omaha. We found that the competition of carriers by water from San Francisco to the Gulf of Mexico and Atlantic seaports, and the competition of refineries on the eastern seaboard with refineries on the Pacific coast, operate, in connection with transportation rates in effect from the East and South to Omaha, to render the circumstances and conditions governing the carriage of sugar by the defendant car-

riers from San Francisco to Omaha substantially dissimilar in comparison with those applying on the transportation for the shorter distance over the same line from San Francisco to Kearney, Nebr., and that these conditions justified a rate of 65 cents per 100 pounds on sugar to Kearney while a rate of 50 cents per 100 pounds is in force to Omaha, but that such circumstances and conditions did not justify the rate of 77 cents per 100 pounds complained of as compared with the rate of 50 cents to Omaha.

The carriers failed to obey this order, and a proceeding for its enforcement was instituted and is now pending in the United States circuit court for the northern district of California.

THE PENNSYLVANIA DEMURRAGE CASE.

This case was brought by the Pennsylvania Millers' State Association against the Philadelphia & Reading Railway Company and others and was decided on October 8 last. The question involved was whether a reasonable time for demurrage was allowed at certain interior points in Pennsylvania within what is known as the territory of the Philadelphia Car Service Association, and it was also claimed that the time so allowed was unjust as compared with the greater time allowed in Philadelphia. The demurrage in question was charged on carload shipments from the West of grain, flour, feed, and hay. It appeared that an allowance of 96 hours was made in Philadelphia, while at the interior points in the Car Service Association territory only 48 hours was granted. Certain rules were in force governing the application of these time allowances for unloading.

The Commission found that if the time allowed at Philadelphia or other terminals for loading or unloading is reasonable and that allowed at interior points is unreasonably small, then an undue prejudice to interior points in violation of the third section of the act might result; and that if demurrage charges are made to commence before the expiration of a reasonable time for loading or unloading, this may be a violation of the provision of section 1, which directs "that charges made for any service rendered or to be rendered in the transportation of passengers or property, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just." We found, however, that the real question for decision was whether the allowance of 48 hours for unloading at interior points before charging demurrage was reasonable.

The Commission held, upon the facts in the case, that 48 hours is an unreasonably small allowance of time for unloading where any portion of it has to be consumed in attending to the preliminaries necessarily antecedent to the actual process of unloading, and our order was that as to grain, flour, hay, and feed consigned to and deliverable at interior points in the territory of the Philadelphia Car Service Association the

carriers should cease from charging demurrage until the expiration of a reasonable time for unloading after the cars have been placed for unloading and notice of such placing has been given the consignee or other proper party. It was our opinion that 48 hours would be a reasonable time for the *actual unloading*. This was the time allowed at Philadelphia for the work of unloading (the remainder of the time allowed at Philadelphia being granted for other purposes), and making that allowance at interior points after the cars have been placed and due notice given would operate to put such points on an equality with Philadelphia. The Commission also said that if by reason of any fault on the part of the consignee the carriers should be unable to place the cars promptly for unloading, the time so lost may be deducted from the 48 hours, and to this end suitable rules may be adopted, the object and intent of our order being to secure 48 hours *net* for unloading where unnecessary delay in placing the cars for that purpose is not caused by the default of the consignee.

Some of the carriers denied that the Commission has any authority under the act to regulate commerce to fix and establish a period within which the members of the complaining association may load or unload cars free of charge upon their tracks. In passing upon this point the Commission said that under the ruling of the United States Supreme Court in the Maximum Rate Case (167 U. S., 479) the Commission has no power to prescribe rates, "maximum, minimum, or absolute," as a mode of enforcing the provision of section 1 of the law requiring all charges to be just and reasonable, and that this ruling of the Supreme Court was based upon the ground principally that the act does not expressly delegate to the Commission the power to prescribe rates; that the law does not expressly confer upon the Commission power to prescribe the time which shall be allowed for loading or unloading cars, and, if the absence of authority expressly conferred is a valid reason for denying power in the Commission to prescribe rates, it would seem that such absence of express authorization would preclude the exercise of the former power.

We said, however, that section 15 of the act to regulate commerce does in express terms provide that the Commission shall, upon finding a carrier in violation of any of the provisions of the act, order it to cease and desist therefrom, and that this power to prohibit an unlawful practice or to forbid the continuance thereof necessarily involves the power to determine and declare the unlawfulness of the practice. The Commission held, therefore, that after investigation it may find a particular rate to be unlawful and prohibit the exaction of that rate, or find the time allowed for loading or unloading unlawful and forbid the charging of demurrage at the expiration of that time and before the expiration of a reasonable time.

REPARATION.

In *Holmes & Co. v. Southern Railway Company et al.*, decided November 13, 1900, the Commission held that a complainant is entitled to an order for reparation in an amount equal to that by which the rates exacted and paid exceed reasonable rates, but the burden of showing the unreasonableness and the amount is upon the complainant; also, that the continuance of a given rate is not conclusive evidence of the reasonableness of that rate; but when a railway company advances a rate which has been for some time in force, the fact of its continuance is in the nature of an admission against that company which tends to show the unreasonableness of the advance, and the force of this admission becomes great in view of the general decline in the average of railway rates and the lessened cost of service.

It was further held by the Commission in this case that the action of a railway company in reducing a rate upon complaint of a shipper is not conclusive evidence that the rate was unreasonable before the reduction; but when the traffic manager of that company, after a careful examination of the facts, makes the reduction, that, too, is in the nature of an admission against the reasonableness of the obnoxious rate at the time of the reduction. A railway company, it was also said, may, from considerations of policy, grant a reduction in its rates which this Commission could not order as a matter of right under the act to regulate commerce.

It appeared that rates on barrel material from the West to Hawkinsville, Ga., were higher than those to Macon, Ga., from February 10, 1896, to January 22, 1897. At times prior to the date first mentioned and uniformly since the date last mentioned the rates to Hawkinsville and Macon were the same. Rates on other commodities were, as a rule, higher to Hawkinsville than to Macon. The distance is greater to Hawkinsville, which is located on a branch line, and competition is less active there than at Macon. Our decision was that the complainant had failed to show that the rate on barrel material under the act to regulate commerce ought, from February 10, 1896, to January 22, 1897, to have been the same to Hawkinsville as to Macon, and the complaint was therefore dismissed.

A similar ruling was made in a case between the same parties, involving rates on hoop iron from Pomeroy, Ohio, and Pittsburg, Pa., to Hawkinsville.

THE COMMUTATION-TICKET CASE.

For a long period of years the Baltimore & Ohio and Pennsylvania systems had in effect between Baltimore and Washington 180-trip quarterly commutation tickets which they sold for \$34.75. They discontinued the sale of such tickets in December, 1898. It resulted from

this action that the cheapest ticket commuters riding daily between Baltimore and Washington could purchase and use was a 60-trip monthly ticket which the company sold for \$15.45. Complaint was made by a committee representing these commuters that this increased cost in the price of commutation tickets was unreasonable and unjust. The case was tried and submitted in the year 1899, and decided by the Commission on the 2d of March last. Upon all the facts disclosed in this case we were constrained to find that the higher rates so put in force by the railway companies were not unjust or unreasonable and did not subject the complainants or the city of Baltimore to undue or unreasonable prejudice or disadvantage.

We said in our decision that the withdrawal of the 180-trip quarterly ticket was undoubtedly a disappointment and in some instances a considerable hardship to the complaining parties and those in like situation. They had good reason to expect that the favorable rates so long enjoyed would be permanently accorded, and naturally felt aggrieved because those rates were no longer allowed. It was quite plain, however, that no remedy for the injustice alleged by the complainants could be afforded in this proceeding unless the action of the carriers in discontinuing this ticket was a violation of the act to regulate commerce, and our opinion was that this action was within the limits of their discretion and did not constitute a violation of that act. The carriers were fairly open to criticism for terminating at such late day a privilege granted for so many years as to have the appearance and hold out the inducements of a permanent policy.

This case presented some rather interesting questions of law. The complainants were not asking for rates on the mileage basis of the quarterly ticket, which should be open to all passengers between Baltimore and Washington. They admitted that such rates, applied to the entire volume of travel, would not be remunerative to the carriers for the service rendered. What they demanded was a special ticket sold only to a described class of persons, limited in number, who live in one place and do business in another. The Commission ruled that it had no jurisdiction to make the order asked for. The theory and purpose of the law are opposed to privileges not enjoyed by all persons alike, and the Commission has no authority to attempt the enforcement of special agreements for the benefit of a particular class. Under the twenty-second section of the act carriers are allowed to issue mileage, excursion, and commutation tickets, but ordinarily they can not be compelled to do so. The permission, it was said, does not create an obligation, and to the extent necessary for their use tickets of the description named are exempt from the general rules of the statute. Compliance with these rules may be directed by the Commission, but requiring exceptions thereto is not within its province, and this applies as well to the restoration of such tickets when they have been

withdrawn as to the refusal to furnish them when their introduction has been requested. If undue prejudice or unjust discrimination had been shown, as, for instance, through the granting of the lower rates at stations similar in character and at similar distances from the common terminus, a different question would have been presented.

Nor, said the Commission, does it follow by any means that carriers can withdraw the various commutation privileges they have been accustomed to grant and lawfully charge all persons the rates at which single one-way tickets had been sold.

No such position is taken and no such question is presented in this case. Commutation tickets are extensively used and have become a recognized feature of suburban transportation. The prices at which they are commonly furnished are much below the rates charged for the ordinary one-way journey.

We are far from saying that a carrier which has established commutation rates for suburban service—especially when residences have been fixed and business interests adjusted in reliance upon their continuance—can suddenly or otherwise withdraw those rates and exact from all its patrons the full regular rate theretofore charged the occasional traveler. That is not our view of the law. If these defendants should discontinue all their commutation, excursion, and round-trip tickets, not only between Washington and Baltimore, but between those cities and their various suburbs, and compel all the people in this territory to pay the present regular rate of 3 cents a mile, the Commission would not hesitate to find that such a charge was grossly unreasonable and a flagrant violation of the act. Yet even then the question would be, as respects our power under the present law, or under any law, What rates under those circumstances, and in view of the far lower rates so long accorded, would be just and reasonable for everyone to pay? We could not go further and require another and lower rate for the benefit of any class in any locality. There can be no legal obligation on the part of the carrier to observe a rate which is just to the general public and also to provide a special and more favorable rate for some portion of the public.

In disposing of this matter we considered the decision of the United States Supreme Court in *Lake Shore & Michigan Southern Ry. Co. v. Smith* (173 U. S., 684) as of decisive application to the case in hand. The Supreme Court held in that proceeding that a statute of Michigan which sought to compel the sale of 1,000-mile tickets at lower rates than those fixed for ordinary passenger travel was unconstitutional, because, after fixing a maximum rate for passengers generally, the legislature in enacting the law in question attempted to discriminate and make an exception in favor of certain persons and give them the right of transportation for a less sum than the general rate provided by law. Manifestly, we said, the power of the Commission can not be greater than the power of Congress or a State legislature to control or prescribe the rates of railroad carriers, and if the courts would not uphold an act of legislation which required these defendants to grant special rates to complainants and others in like situation it is plain that an order of the Commission directing them to do so would be equally invalid for want of authority to make it.

It was also suggested in this case that the passenger rates in force

between Baltimore and Washington were unlawful because the lower rates had been withdrawn as the result of an agreement between the carriers, which violated the antitrust law. We held that no relief could be afforded the complainants in this proceeding upon the theory that the quarterly ticket was withdrawn under an agreement between the carriers in violation of the antitrust law, even if the facts were found in support of that contention, as the Commission has no authority to administer that law or even to determine whether it has been violated, and if an investigation should disclose a violation of that statute the power of the Commission would not be enlarged nor its duty changed in respect of the rate involved in the inquiry.

It should be added that one Commissioner filed a dissenting opinion in this case, and another Commissioner, having been appointed after the case was heard and submitted, took no part in the decision.

RATES ON ROOFING SLAG.

In *Warren Ehret Company v. The Central Railroad of New Jersey and the New York, New Haven & Hartford Railroad Company* it appeared that the rate on roofing slag, carloads, from Leesport, Pa., to Harlem River station was \$3.40 per ton, of which the carriers to Communipaw N. J., on the Hudson River, received \$1.30 per ton, the balance, amounting to \$2.10 per ton, going to the New York, New Haven & Hartford Railroad Company for its service in carrying the slag by its car floats from Communipaw around New York City to its Harlem River station. Such through rate also applied as a group rate to numerous stations on the New York, New Haven & Hartford Railroad in what is known as the Hartford group, including Waterbury, Conn. The freight could be transferred by an independent lighterage company from Communipaw to Harlem River for 80 cents per ton, and railroads terminating on the New Jersey shore generally allow 60 cents per ton for lighterage to points within New York lighterage limits.

We held, upon all the facts, that the through rate of \$3.40 to Harlem River was grossly unreasonable, and that it was rendered so by the excessive share of \$2.10 to the New York, New Haven & Hartford Railroad Company for transfer by its car floats from Communipaw to Harlem River; that reasonable compensation for such delivery by car float should not exceed \$1 per ton, and that this added to the share of \$1.30 received by the connecting carriers would constitute a reasonable and lawful rate of \$2.30 per ton, which the defendant carriers were recommended to put in force; that the complainant was entitled to reparation on a shipment of two carloads of slag to the extent of the difference between the rate charged and the rate found reasonable. The propriety of the \$3.40 rate per ton applied as a group rate to all stations in the Hartford group was not passed upon by the Commission in this proceeding.

We further held, citing the decision of the United States Supreme Court in the Import Rate case (162 U. S., 205), that while a railroad company operating its road as part of a through line in connection with other carriers who are defendants in a case brought to test the legality of a through charge over such line is a proper party, it is not a necessary party to the proceeding. The Commission also reaffirmed previous decisions to the effect that although a shipper or consignee has no direct interest in the way a joint rate is divided between the carriers, nor in the amount of the division received by each carrier, he is entitled, nevertheless, to inquire into such division when he complains that the joint rate is unlawful, for the amount so received by the different carriers may be significant upon the reasonableness of the aggregate charge; and when an unlawful rate results from some arbitrary share or division exacted by one of the carriers the Commission will find the facts and state its conclusions with respect to such share or division.

UNREASONABLE RATES ON VEGETABLES.

Allegations of unreasonable rates on vegetables from points in Florida to New York and other Northeastern destinations were investigated by the Commission in a proceeding instituted upon its own motion, but the evidence presented was too uncertain and inconclusive to enable the Commission to make the necessary comparisons or arrive at any definite conclusion.

The evidence in this case indicated that rates on vegetables from points in Florida to New York and other Northeastern points were not made upon a basis of 100 pounds, but upon crates of standard dimensions or estimated weight other than 100 pounds. One witness stated that a package weighing 180 pounds, larger and heavier than any shown to have been shipped, would be carried for the same rate as a lighter one.

It was apparent that the shippers were ignorant of their rights under present schedules, and that this was due to failure on the part of the defendants to make their tariffs sufficiently explicit, rather than to any want of diligence on the part of shippers. We held that, whether the standard for the crates used in the shipments of vegetables to Northern or Northeastern points be one of weight or dimensions, the published tariffs should state plainly the weight or dimensions of the freight to which the rates apply.

CASES SETTLED AND DISCONTINUED.

Several cases have been disposed of during the year through concession of relief by the defendant carriers.

An association of granite manufacturers complained against certain railroad companies that they had unlawfully increased the rates on less than carload shipments of granite from New England points by

changing the classification of such shipments from fourth to third class. After the complaint and some of the answers had been filed the railroad companies offered to make a reduction of 20 per cent from the third-class rate, providing, however, that the rate should not be less than fourth class. The complaining association accepted the proposition, and further proceedings in the case were suspended.

A similar complaint was filed by a firm manufacturing granite monuments and statuary in Chicago, and this case was also discontinued upon the action of the carriers reducing the fourth-class rate 20 per cent, as above stated.

A dealer in Wisconsin had shipped from a point in Massachusetts to a point in Wisconsin nine pieces of granite weighing 9,300 pounds. The destination point is a local station on a branch line of the delivering road, which was made sole defendant in the case. The lowest charge applicable to the shipment was a combination of the published rate to a junction point nearest to the point of delivery and the local rate from such junction point to destination. The carrier charged and collected a higher combination made up of the rates to and from Chicago. The delivering road insisted that the overcharge resulted from the action of its Eastern connections, and said that it had been unable to secure their consent to refund the excess. After the formal complaint had been filed and served the Eastern lines agreed to apply the lower rate basis, and so the complaint was satisfied.

A firm of grain dealers at Berwyn, Ind. T., complained that the defendant carrier's rates on wheat, corn, and other grain from Berwyn, Ardmore, and Dougherty, Ind. T., to Galveston, Tex., for export were so adjusted as to unlawfully discriminate against shipments from Berwyn. The carrier filed its answer, but when the case came up for hearing at Ardmore its representative agreed to a readjustment satisfactory to the complainant on both export and domestic shipments. This agreement was subsequently carried out by the carrier, and upon notice to that effect the proceeding was discontinued by the Commission.

The following cases were discontinued for want of prosecution:

Complaint was made by a dealer in grain and grain products at Bangor, Pa., that the rates on such commodities from Chicago and other Western points to Bangor were unlawful under sections 1, 2, and 3 of the law as compared with the rates from the same points to Stroudsburg, Allentown, and Bethlehem, Pa. The case having remained on the docket for a considerable time without any request for hearing, the Commission finally assigned the case upon its own motion, but prior to the date fixed for the hearing the complainant notified the Commission of his desire to withdraw the complaint. As the case involved no question of general public interest, it was thereupon discontinued.

Five cases brought by the North Carolina Freight Association against various carriers, and involving alleged violations of the long and short haul clause of the law, have also been discontinued on account of suspension or dissolution of the complaining association and the failure of any interested party to appear in its behalf or in its stead to maintain the proceeding.

Two cases instituted by a car ferry company located in the State of Michigan involved alleged discrimination in the application of switching charges. The complainant claimed that a larger switching charge was imposed upon traffic carried by its line than was charged by the defendant carriers upon traffic coming by an all-rail line. The complainant having failed to respond to repeated notifications that the Commission was ready to hear the cases, the complaints have been dismissed.

CIVIL CASES PENDING IN THE COURTS.

Interstate Commerce Commission *v.* Louisville & Nashville Railroad Company. Rates on coal. United States circuit court of appeals, sixth judicial circuit.

Interstate Commerce Commission *v.* Louisville & Nashville Railroad Company. Middlesboro, Ky., long and short haul case. United States circuit court, southern district of Ohio.

Interstate Commerce Commission *v.* Clyde Steamship Company et al., and four other cases. Georgia railroad commission, long and short haul cases. Three cases in the United States Supreme Court. Two cases in the United States circuit court, southern district of Georgia.

Brewer et al. *v.* Louisville & Nashville Railroad Company et al. Griffin, Ga., long and short haul case. United States circuit court, southern district of Georgia.

Interstate Commerce Commission *v.* Northern Pacific Railroad Company et al. Fargo, N. Dak., long and short haul case. United States circuit court, district of North Dakota.

Interstate Commerce Commission *v.* Western New York & Pennsylvania Railroad Company et al. Discriminating rates on petroleum oil. United States circuit court, western district of Pennsylvania.

Interstate Commerce Commission *v.* Southern Railway Company et al. Two cases. Piedmont, Ala., long and short haul cases. United States circuit court, northern district of Alabama.

East Tennessee, Virginia & Georgia Railway Company et al *v.* Interstate Commerce Commission. Chattanooga, Tenn., long and short haul case. United States Supreme Court.

Colorado Fuel and Iron Company *v.* Southern Pacific Company et al. Rates on iron and steel articles from Pueblo, Colo., to San Francisco, Cal. United States Supreme Court.

Interstate Commerce Commission *v.* Chicago, Burlington & Quincy Railroad Company et al. Terminal charge on live stock. United States Supreme Court.

Interstate Commerce Commission *v.* Louisville & Nashville Railroad Company et al. Rates on naval stores to Savannah and Pensacola. United States circuit court, southern district of Georgia.

Interstate Commerce Commission *v.* Nashville, Chattanooga & St. Louis Railway Company et al. Hampton long and short haul case. United States circuit court, southern district of Florida.

Interstate Commerce Commission *v.* Southern Pacific Company et al. Kearney long and short haul case. United States circuit court, northern district of California.

Interstate Commerce Commission *v.* Louisville & Nashville Railroad Company et al. La Grange, Ga., long and short haul case. United States circuit court of appeals, fifth judicial circuit.

CRIMINAL PROCEEDINGS.

The cases pending in the southern district of Georgia against S. P. Shotter and others, in which the defendants were indicted for falsely reporting the weight of shipments of turpentine, were disposed of in February last. The defendant Shotter pleaded guilty, and a fine of \$1,000 was imposed. A *nolle prosequi* was entered as to each of the other defendants.

The case of United States *v.* Ault et al., mentioned under this head in our last report, has been disposed of in a decision of the United States court of appeals adverse to the Government. This decision is set forth under the heading "Removal of indicted persons to other judicial districts for trial" in this report.

The indictments pending in the eastern district of Louisiana against officers of the Southern Pacific Company, as mentioned in our last report, have not been brought to trial. In May last the United States attorney for that district notified our special agent that he had been directed by the Department of Justice to withhold action until further instructed.

J. W. Price, of Belknap & Co., Louisville, Ky., and others were under indictment in Kentucky under sections 5399 and 5440 of the United States Revised Statutes. These indictments, referred to on page 74 of our last annual report, grew out of the withholding of certain papers from the Federal grand jury in Kentucky while investigating alleged violations of the act to regulate commerce. In March last Price was also indicted in the United States district court of Kentucky for false billing of freights in violation of the act to regulate commerce.

The Commission is informed that the defendant Price has been fined \$500 in the case originating under section 5399 of the Revised

Statutes and, upon his plea of guilty, \$1,000 in the case brought under the act to regulate commerce. The costs were added to the fine in each case. The case under section 5440, Revised Statutes, was discontinued. While the indictments found under the Revised Statutes, as above mentioned, were pending, and just prior to the finding of the indictment under the act to regulate commerce, the defendants in the cases under the Revised Statutes are said to have intimated their willingness to submit to fines in those cases aggregating \$1,500, if all prosecutions for past alleged offenses should be dropped. This was understood to include an indictment against Belknap for false billing under the act to regulate commerce, which had been found by the Federal grand jury in Texas.

The proposition was referred to the Commission by the Department of Justice in February last for such suggestions or recommendations as it might care to make in relation thereto. The Commission replied that it was not willing to assent to this proposition which, if carried out, would result in full immunity to the principal offenders through the payment of very moderate fines by those charged with aiding them to escape indictment. It will be noted that the final disposition of these cases differs somewhat from the settlement originally proposed, and whether it resulted from any further offer on the part of the defendants the Commission is not definitely advised.

COURT DECISIONS.

THE BEHLMER CASE.

This case, otherwise known as the Summerville, S. C., Long and Short Haul case, was decided by the United States Supreme Court in favor of the railroad companies on January 8, 1900 (*L. & N. R. Co. v. Behlmer*, 175 U. S., 648). In deciding the case the Supreme Court referred to its former decisions construing the long and short haul clause of the law and defined somewhat more fully its view concerning the effect of competition in cases brought under that provision of the statute. The following extracts from the decision show the opinion of the court upon this question:

What was decided in the previous cases was that under the fourth section of the act substantial competition which materially affected transportation and rates might under the statute be competent to produce dissimilarity of circumstances and conditions, to be taken into consideration by the carrier in charging a greater sum for a lesser than for a longer haul. The meaning of the law was not decided to be that one kind of competition could be considered and not another kind, but that all competition, provided it possessed the attributes of producing a substantial and material effect upon traffic and rate making, was proper under the statute to be taken into consideration.

If it were true * * * that where the inherent character of the competition was of a nature to be taken into consideration, any competition, however remote and unsubstantial its influence on rates and traffic, would be sufficient to bring about

dissimilarity of circumstances and conditions, the question would be easy of solution, for then to weigh the testimony would involve no serious duty. But this suggestion rests on an entire misconception of the adjudications of this court. In considering the right of a carrier to act on competitive conditions, deemed by him to produce dissimilarity of circumstances and conditions, the court, in *Interstate Commerce Commission v. Alabama Midland Railway* (168 U. S., 173), said:

“But it does not mean that the action of the carriers, in fixing and adjusting the rates in such instances, is not subject to revision by the Commission and the courts, when it is charged that such action has resulted in rates unjust or unreasonable, or in unjust discriminations and preferences.”

Again (p. 167) it was said:

“In order further to guard against any misapprehension of the scope of our decision it may be well to observe that we do not hold that the mere fact of competition, no matter what its character or extent, necessarily relieves the carrier from the restraints of the third and fourth sections, but only that these sections are not so stringent and imperative as to exclude in all cases the matter of competition from consideration in determining the questions of ‘undue or unreasonable preference or advantage,’ or what are ‘substantially similar circumstances and conditions.’ The competition may in some cases be such as, having due regard to the interests of the public and of the carrier, ought justly to have effect upon the rates, and in such cases there is no absolute rule which prevents the Commission or the courts from taking that matter into consideration.”

It follows that while the carrier may take into consideration the existence of competition as the producing cause of dissimilar circumstances and conditions, his right to do so is governed by the following principles: First, the absolute command of the statute that all rates shall be just and reasonable, and that no undue discrimination be brought about, though in the nature of things this latter consideration may in many cases be involved in the determination of whether competition was such as created a substantial dissimilarity of condition. Second, that the competition relied upon be not artificial or merely conjectural, but material and substantial, thereby operating on the question of traffic and rate making, the right in every event to be only enjoyed with a due regard to the interest of the public, after giving full weight to the benefits to be conferred on the place from whence the traffic moved as well as those to be derived by the locality to which it is to be delivered.

The conceded facts in the case were that several carriers transported hay from Memphis under through bills of lading, by continuous carriage, to Summerville and Charleston, S. C. The roads shared in an agreed rate on traffic to Charleston and in a precisely equal-in-amount rate on traffic to Summerville. On shipments to Summerville, however, there was added to the Charleston rate the amount of the local rate from Charleston to Summerville, the benefit of which additional exaction was solely received by the local road on which Summerville was situated. Under the interpretation which the Commission had given to the long and short haul clause, the Commission ordered the carriers in this case to cease and desist from charging more for the shorter distance to Summerville than for the longer distance to Charleston. The carriers declined to obey the order, and the complainant, Behlmer, filed a petition in the United States circuit court for the eastern district of South Carolina praying for its enforcement. The circuit court dismissed the petition, but on appeal to the circuit court of appeals the judgment of the circuit court was reversed.

The railroad companies then took an appeal to the United States Supreme Court. The Supreme Court decided that the construction given in this cause by this Commission and the circuit court of appeals to the fourth section of the act to regulate commerce was erroneous, and hence that both the Interstate Commerce Commission and the circuit court of appeals mistakenly considered, as a matter of law, that competition, however material, arising from carriers who were subject to the act to regulate commerce could not be taken into consideration; and likewise that all competition, however substantial, not originating at the initial point of the traffic, was equally, as a matter of law, excluded from view. No decision was rendered by the Supreme Court upon the facts in this case. "If," said the court, "we were to undertake the duty of weighing the evidence in this record we would be called upon, as a matter of original action, to investigate all these serious considerations which were shut out from view by the Commission and were not weighed by the circuit court of appeals, because both the Commission and the court erroneously construed the statute."

The court further said that the law attributes *prima facie* effect to the findings of fact made by the Commission, and that body, from the nature of its organization and the duties imposed upon it by the statute, is peculiarly competent to pass upon questions of fact of the character herein arising; and it quoted from its decision in the Import Rate case (162 U. S., 197) its ruling remanding that cause to the Commission because "the defendant was entitled to have its defense considered, in the first instance at least, by the Commission upon a full consideration of all the circumstances and conditions upon which a legitimate order could be founded," and because "the question whether certain charges were reasonable or otherwise, whether certain discriminations were due or undue, were questions of fact to be passed upon by the Commission in the light of all facts duly alleged and supported by competent evidence."

These rulings as to the right of a railroad company to have its defense considered in the first instance by the Commission upon full consideration of all the facts suggest reference to the Social Circle case (162 U. S., 196), in which the Supreme Court expressed its disapproval of that method of procedure on the part of the railroad companies which should lead them to withhold the larger part of their evidence from the Commission and first adduce it in the circuit court. The court further said in that case that "the theory of the act evidently is, as shown by the provision that the findings of the Commission shall be regarded as *prima facie* evidence, that the facts of the case are to be disclosed before the Commission." The difficulty is, however, and this the Supreme Court observed in the Social Circle case, that neither party is restricted in a trial in the court to the evidence that was before the Commission. It is generally practicable, therefore, notwithstand-

ing the expressed opinion of the Supreme Court in favor of a full disclosure of all the facts in any case before the Commission, for a defendant carrier to make out a somewhat different case before the circuit court than was submitted to the Commission.

Having reached the conclusions in the Behlmer case, as above indicated, the court directed that the judgment of the circuit court of appeals should be reversed with costs; that the case be remanded to the circuit court with instructions to modify its decree adjudging that the order of the Commission be set aside with costs, by providing that the dismissal be without prejudice to the right of a party in interest to apply to the Commission to be substituted in the original proceeding before the Commission instead of the petitioner (who had died since submission of the cause in the Supreme Court), and that upon such substitution the Commission should proceed, upon the evidence already introduced before it, or upon such evidence and any additional evidence which it might allow to be introduced, to hear and determine the matter of controversy in conformity to law.

A minor question in this case was whether the carriers engaged in transportation to Summerville were operating "under a common control, management, or arrangement for a continuous carriage or shipment," so as to bring them within the provisions of the act. The court, after stating the facts as hereinabove briefly outlined and citing the Social Circle case, said:

The contention that under this state of facts the carriers did not constitute a continuous line, bringing them within the control of the act to regulate commerce, is no longer open to controversy in this court.

THE COLORADO FUEL AND IRON CASE.

In November, 1895, the Commission decided, in a case brought by the Colorado Fuel and Iron Company, that the rate charged by carriers from Pueblo, Colo., to San Francisco, Cal., on iron and steel articles, amounting to \$1.60 per 100 pounds, was unlawful under the act to regulate commerce, and that the rates charged on such articles from Pueblo to San Francisco should not be more than 75 per cent of the rates contemporaneously charged on like traffic from Chicago to San Francisco, nor more than 45 cents per 100 pounds on steel rails and fastenings, and 37½ cents per 100 pounds on bar iron and other enumerated iron articles. The maximum rates so fixed were 75 per cent of the rates then in force from Chicago to San Francisco.

The rates ordered by the Commission were not put in force as required by the order, and a proceeding was instituted in the circuit court for the district of Colorado to enforce the order. While that suit was pending, and after the court had overruled a demurrer filed by the Southern Pacific, the rates required under the order of the Commission were put into effect by the carriers. These rates were maintained for about

two years and until about October 17, 1898, when the Southern Pacific Company gave notice of a proposed increase in rates to 60 cents per 100 pounds on steel rails and fastenings and 75 cents per 100 pounds on other steel and iron products. Thereupon the Colorado Fuel and Iron Company filed a bill in the circuit court for the district of Colorado against the Southern Pacific Company and its connecting railroads for the purpose of preventing them from putting in force such increased rates, and prayed for an injunction. No answers having been filed, a decree *pro confesso* was subsequently entered. The complainant also having asked for damages in the sum of \$100,000, subsequent proceedings were taken before a master to ascertain the amount of the complainant's damages, and after the master had filed his report recommending a decree for damages in the sum of \$35,300 the case came before the court for final hearing and decree.

The court rejected the complainant's demand for damages, but awarded an injunction, first, that the defendants be enjoined and restrained from further continuing to violate and disobey the order of the Commission, and, second, that the defendants be enjoined and required, in respect of complainant's traffic from Pueblo to San Francisco and other points in California, to cease and desist from unjust and unreasonable charges, or from demanding a greater compensation for services to be rendered the complainant than they charge other persons for a like and contemporaneous service in the transportation of like kind of traffic under substantially similar circumstances and conditions, or from giving undue and unreasonable preference and advantage to particular persons, corporations, and localities at Chicago, Ill., and elsewhere eastward of that city, or from subjecting the complainant and its traffic to undue and unreasonable prejudice and disadvantage and unjust discrimination, or from preventing the complainant from having its interstate traffic moved upon terms and conditions as favorable as those given by them for like traffic under similar circumstances and conditions for other shipments.

A third paragraph in the restraining order required the defendant carriers to move the interstate traffic of the complainant at the same rates charged and upon terms as favorable as those given by the defendants, under similar conditions, to any other shipper, to the end that they charge and demand from the complainant for transportation from Pueblo to San Francisco and other California points on steel rails and fastenings no more than 45 cents per 100 pounds, and on bar iron and other iron articles named no more than 37½ cents per 100 pounds. From this final decree the Southern Pacific appealed. The complainant also appealed from the decision disallowing its damages.

On April 16, 1900, the circuit court of appeals handed down a decision reversing the decree of the circuit court and directing dismissal of the complaint. The court held that the first paragraph of

the restraining order requiring the carrier to comply with the order of the Commission could not be upheld consistently with the decisions of the United States Supreme Court in the Maximum Rate case (167 U. S., 479), the Social Circle case (162 U. S., 184), and the Alabama Midland case (168 U. S., 144), and said that these decisions of the Supreme Court conclusively establish the proposition that the order of the Interstate Commerce Commission which the defendant company was enjoined to obey was a void order because the Commission undertook to prescribe a maximum rate between Pueblo and San Francisco, which it had no power under the interstate commerce act to prescribe, directly or indirectly, by determining with reference to the past what was a reasonable rate and thereupon declaring that the rate should not be raised above that which it had adjudged to be reasonable.

The court also held the third paragraph of the restraining order to be erroneous, saying that here the court had undertaken to do that which the Interstate Commerce Commission had previously done, namely, to prescribe maximum rates. The court further observed in this connection that in the maximum-rate and other cases above cited the reasoning of the Supreme Court by which it reached the conclusion that the Interstate Commerce Commission has no power to fix maximum or minimum rates, either directly or indirectly, is founded upon the fundamental proposition that the fixing of rates for interstate carriers involves an exercise of legislative as distinguished from judicial power, and that the power does not belong to the Commission, because it was not granted by the interstate commerce act. For much stronger reasons, says the circuit court of appeals, the power to fix a schedule of rates for interstate carriers does not belong to the Federal courts, because Congress has not attempted to delegate that authority to the courts, even if it could divest itself of that legislative function and impose it upon the judicial branch of the Government.

It will be observed that in this case the Commission, besides prescribing maximum rates, also determined the relation of rates to San Francisco as between Pueblo and Chicago. That is to say, the carriers were required by the Commission to cease and desist from charging from Pueblo to San Francisco more than 75 per cent of the rate from Chicago to San Francisco. It was contended by the Colorado Fuel and Iron Company before the court of appeals that although the Commission is not empowered to fix either a maximum or minimum rate upon an independent consideration of what is a reasonable charge, yet when carriers themselves established a rate between certain points the Commission may require that the rate to or from an intermediate point shall be a certain proportion of the established through rate. As to this, the court says that prescribing a rate from Pueblo to San Francisco by reference to a rate that had theretofore been established by carriers between Chicago and San Francisco involved the

exercise of legislative functions to the same extent as fixing the rate between the former points on an independent consideration of what would be a reasonable compensation for the service, and so held that the Commission had no more power to fix a rate from Pueblo to San Francisco by relation to the existing rate from Chicago to San Francisco than it had to fix independently the rate from Pueblo to San Francisco.

As to that part of the restraining order granted by the circuit court enjoining the defendants from demanding unreasonable rates, giving undue and unreasonable preferences to persons or localities, or from subjecting the complainant to an undue or unreasonable disadvantage, the court said it is not apparent that any special advantage would result to the complainant from an order couched in such general terms, which merely repeats the general admonitions of the interstate commerce act. It simply, the court held, leaves the questions whether the threatened rate is reasonable, or whether it would operate as an undue preference or unreasonable discrimination, to be tried and determined in a proceeding for contempt, instead of being tried in the usual way before a court and jury in an action for damages, after the rate has been exacted or actually demanded on a tender of property for shipment.

The court further said:

We perceive no reason why the remedy at law for the threatened wrong should be pronounced ineffectual or inadequate. The damages that the complainant will sustain if it is right in its contention as to the unreasonableness of the proposed rates can be ascertained by a court and jury, while it is not suggested that the defendant company is insolvent, or that it will be unable to respond for such damages as a jury may assess. Besides, a single verdict before a jury establishing the unreasonableness or discriminating character of the proposed rate would probably lead to a withdrawal of the rate, and avoid the necessity of further action.

In concluding its opinion the court observed, however:

It may well be that the interstate commerce act would be much more effectual in accomplishing the objects which it was designed to accomplish if the Commission provided for therein was empowered to prescribe a schedule of maximum rates in cases like the one in hand. But that power, it seems, has not been conferred, and the courts can not enlarge the authority of the Commission by enforcing orders of that body which it has no power to make. Neither can the courts undertake to name a maximum rate in advance and enjoin a carrier from violating it.

The Supreme Court has held, as stated in the decision of the court of appeals, that the Commission is without authority to prescribe maximum and minimum rates in cases coming before it for determination; but in arriving at that conclusion the court was dealing with section 1 of the act, which condemns unreasonable rates and requires reasonable charges. We have not been convinced that such ruling operates to deprive this Commission of authority to carry out the requirements of the third section, which forbids undue preferences and wrongful prejudices as between shippers, traffic, or localities, by determining

the just relation of rates as between such shippers, traffic, or localities. Indeed, the Supreme Court said in the Maximum Rate Case, 167 U. S., 479 (the case in which the power to prescribe maximum reasonable charges was denied):

But has the Commission no functions to perform in respect to the matter of rates; no power to make any inquiry in respect thereto? Unquestionably it has, and most important duties in respect to this matter. It is charged with the general duty of inquiring as to the management of the business of railroad companies, and to keep itself informed as to the manner in which the same is conducted, and has the right to compel complete and full information as to the manner in which such carriers are transacting their business. And with this knowledge it is charged with the duty of seeing that there is no violation of the long and short haul clause; that there is no discrimination between individual shippers, and that nothing is done by rebate or any other device to give preference to one as against another; that no undue preferences are given to one place or places or individual or class of individuals, but that in all things that equality of right, which is the great purpose of the interstate commerce act, shall be secured to all shippers.

In what possible way could this Commission have enforced that "equality of right" as between Pueblo and Chicago on shipments to San Francisco, Pueblo being fully 1,000 miles nearer than Chicago to San Francisco, except by determining the relation of rates which should justly prevail from Pueblo and Chicago—not fixing the rates themselves nor even the maximum rates from either place, but simply the relation of such rates? In this case the fair relation was indicated by the facts to be 75 per cent of the Chicago rate, and, so far as this part of the order applied, the carriers might raise the Chicago rate from 50 cents to \$5 or more, and the Pueblo rate to as much as 75 per cent thereof. If we had held under the fourth section, or even the third, that the Pueblo rate should not be more than the rate from Chicago, we must have said in effect that the Pueblo rate should not be more than 100 per cent of the Chicago rate; and no court has yet held that the Commission may not, upon suitable showing, forbid greater charges from intermediate than from more distant localities.

If we may find that charging more from Pueblo than from Chicago constitutes unlawful prejudice and disadvantage, and order a carrier to cease and desist therefrom, it seems clear that we are also authorized to find and order, for the same reason, that the rate from Pueblo should be more or less than the Chicago rate. In either case we are required to decide according to the facts and with the view of enforcing that "equality of right" which is the great purpose of the interstate commerce act.

The view of the court of appeals that the suit at law for damages would not be ineffectual or inadequate merits attention. A doubt is thrown upon the very existence of such a remedy under the decision of the United States circuit court in Iowa (*Van Patten v. C., M. & St. P. Ry. Co.*, 81 Fed. Rep., 545), to the effect that when carriers have established and published schedules of rates and charges, as required

by section 6 of the act, such rates are conclusively just and reasonable in cases at law, and courts and juries can not therefore afford a remedy in suits for damages.

But, passing that by, in what plight would even a great corporation like the Colorado Fuel and Iron Company be if it should rely upon a damage suit to bring about enforcement of just transportation charges? Suppose it had brought suit for the \$100,000 damages claimed in this suit. The time involved in this very case was fully a year and a half from the date the complainant filed its bill in the circuit court. If it should refrain from participating in California business for that length of time it must lose a custom which it can not at once regain; and California points are among its nearest and largest markets. The loss so involved could not be recouped in any suit for damages. Suppose, again, that, pending the controversy, it goes on doing business with California towns on the basis of such lower rates as it insists are just, who will assert that its resources can stand such a strain, or that as a shipper it may rightfully be forced to hazard its capital and perhaps its existence as a commercial corporation upon the chance of succeeding at the end of a long drawn out legal controversy?

Let it be assumed, however, that the company can surmount these difficulties; that it can stand the losses resulting from the litigation; that it has been able to introduce necessary evidence at the trial, notwithstanding the strict rules of taking testimony in suits at law, and has won its case; it then stands in legal effect precisely where it stood at the outset. It has recovered its damages, but the rates need not be changed, and it is conceivable that the carrier would prefer to defend successive suits of the same kind rather than change its rates to avoid them, and thereby lose advantages it might retain in other respects. Another result might well be the concession secretly of unlawful advantages to this company, which is strong enough to resist rate aggression, thus producing discriminations resulting in serious loss, if not ruin, to other shippers competing in the same trade.

Conceding, however, that some relief may be secured through damage suits in court by a large and influential corporation like the one in this case, it is plain that such procedure is not adapted to the needs of the great mass of shippers, who can neither afford to bring and maintain a more or less expensive suit every time an unreasonable or unjust rate is charged, nor to do business in reliance upon a possible recovery in the law courts of sums unlawfully exacted for transportation during any given period.

But the fundamental reason why the remedy can not be found in a case for damages is that the person who pays the freight, and who alone is entitled to recovery, is generally not the one who is damaged. For example, in all that large and most numerous class of shipments which are handled by traders or middlemen, while they actually pay

the freight, but little if any of the loss from unreasonable charges falls upon them, for the rate is a factor to be added to the cost of the goods when bought or to the price of the goods when sold. At times, when the cost of carriage is small, the trader may be forced to absorb the whole loss; and there are also many instances in which it is difficult to determine just where the excess in freight rate actually falls. It may be upon the producer, or upon the consumer, or the trader, or upon all three in proportions impossible to determine. As a rule, therefore, the person actually injured can not obtain redress, and in those cases where the real sufferer can sue and recover the excess above unreasonable or unjust charges, the suit at law will not ordinarily be instituted.

THE LIVE STOCK TERMINAL CHARGE CASE.

In our last annual report we noticed the dismissal by the United States circuit court, northern district of Illinois, of the petition filed by the Commission to enforce its order in Cattle Raisers' Association of Texas and Chicago Live Stock Exchange against the Chicago, Burlington & Quincy Railroad Company et al. This case involved the legality under the act to regulate commerce of a terminal charge in Chicago of \$2 per car for delivering cattle at the Union Stock Yards. We held this charge to be unlawful under sections 1 and 3, and recommended the carriers not to exceed a charge of \$1 per car for such service. An appeal was taken from the decision of the circuit court, and on June 15 last the circuit court of appeals affirmed the judgment of the circuit court (103 Fed. Rep., 249). The case is now pending on appeal in the United States Supreme Court. The opinion of the court of appeals was delivered orally. The decision of the court was, in substance, that—

A separate and fixed terminal charge of \$2 per car on live stock consigned to or from Chicago, made by the railroads entering that city, in addition to the charge for transportation over their own lines, to cover the cost of transferring such cars from their lines to the Union Stock Yards, which constitute the live-stock market of the city, over the tracks owned by the stock-yards company, and which is shown to be approximately the average cost of such service, when adopted and published as a part of their rates, in accordance with the requirements of the interstate commerce law, does not render such rates unreasonable and unjust, although the roads themselves furnish no terminal facilities at Chicago for handling stock, and the Union Stock Yards were originally established, and have ever since been used, as the general depot for live stock by all the roads.

A dissenting opinion, filed by Circuit Judge Grosscup, states that the question of the lawfulness of this terminal charge had been before the courts of that circuit three times.

In the first case it was held by the circuit court that as a matter of public policy the charge for freight must be held to cover the entire service from depot to depot, including facilities for loading and

unloading, and the service being a single one, the compensation is likewise single and in law incapable of division. That case was reviewed by the circuit court of appeals, which held that there is no reason in law why the compensation may not be apportioned, that a charge may be made for the loading, another for the carriage, and still another for unloading and delivery. In the present case, the dissenting judge says, the majority of the court hold it to be the general duty of railways to provide proper facilities for the reception and delivery of freight and passengers, and, inferentially, that no extra charge may be made for the unloading facilities, but that live stock is regarded as an exceptional kind of traffic and its transportation to and delivery at the stock yards as something superadded to the general undertaking of the railway companies to transport live stock from the shipping station to Chicago, and that this opinion seems to shift the ground upon which the previous decision of the court of appeals rested. The following extract from the dissenting opinion is quoted as to the propriety of a single charge:

Passengers from New York, having paid their fare to Chicago, would feel outraged if, once within the city limits, they were compelled to pay an additional so-called terminal charge or disembark at a suburban station. The shipper of freight would experience the same feeling if in the absence of directions to the contrary his goods were delivered at some place other than the carrier's general depot. The fact that a divisional rate was formally posted would not disabuse their expectations in time to adjust their course to the real rate thus imposed.

The law, in my judgment, upon considerations of public policy comes to their rescue. It requires the carrier to do what, in view of this conception in the public mind respecting travel and shipment—a conception natural and almost universal—the carrier ought in good conscience to do. An enforced single charge is no hardship to the carrier; it prevents infinite misunderstanding and inconvenience among its patrons. It is the only method that, treating the carrier fairly, at the same time fairly subserves the interests of the public. It is simply a recognition of an almost universal fact—a fact that is not undone by special provisions written into unnoticed tariff schedules. If the law, irrespective of the carrier's wish or contract, in subserving the public interests interferes to impose a duty that the appliances shall be reasonably sufficient, and that the freight shall be carried in the customary mode, I can see no reason why upon analogous motives it should not recognize the convenience and the justice of the rule here insisted upon and impose a duty in accordance.

The dissenting opinion also calls attention to the fact that these stock yards were established by the railways as their own depot before there was any market for cattle at the yards. "The railways in establishing these yards did not go to the market—the market came to the railways;" but assuming the contrary to be true, the opinion goes on to say that fact would not make the stock yards any the less the general railway depot in Chicago for the delivery of live stock. The dissenting judge concludes his opinion as follows:

The general rule invoked is a salutary one and should not be frittered away upon exceptions not founded upon cogent reasoning. Once open the door to exceptions on easy hinges, and a multitude will find their way in, until, indeed, the rule itself will have become the exception.

SUSPENSION OF DECREE PENDING APPEAL.

In the Lagrange, Ga., long and short haul case, which was discussed in our last annual report, the decision of the circuit court having been rendered in favor of the Commission and a decree entered enforcing its order, the defendants applied for suspension of the decree and suspension and supersedeas of the injunction which had been issued. This was granted by the court on the ground that the carriers might be subjected to irreparable injury and to a multiplicity of suits if the decision should be enforced. The court directed, however, that the carriers should keep accurate account of all shipments from New Orleans to Lagrange over their line and make report thereof to the court once in every three months pending the appeal, and required them to file bond conditioned that if the defendant carriers should not succeed on appeal they will promptly pay to the persons entitled thereto the amounts so paid for transportation in excess of the reduced rates ordered by the Commission and decreed by the court.

In granting the application for suspension and supersedeas the court apparently construed that part of the act which reads that "appeals shall not operate to stay or supersede the order of the court or any writ or process thereon" to relate only to the effect of the appeal, and not to deprive the circuit court of its right of control over its own decrees during the term at which it was rendered and before an appeal is prayed.

BELT RAILROAD COMPANIES ENGAGED IN INTERSTATE COMMERCE.

A case of considerable importance as involving application of the act to regulate commerce to terminal or belt railroad companies was decided by the United States circuit court for the district of Indiana on January 27, 1900, in *Interstate Stock Yards Co. v. Indianapolis Union Railway Company et al.* (99 Fed. Rep., 472). The court held in this case:

A terminal or belt railroad company, whose line is in and around a city and entirely within one State, which received interstate freight for shipment from or delivery to points on its line on through bills of lading issued by other companies on whose lines the shipment begins or ends, submits its road to a common control for continuous shipment, within section 1 of the interstate commerce act, and is subject to the provisions of such act.

The right of a shipper to invoke the provisions of the interstate commerce law against discrimination on interstate shipments against a railroad company on whose line he is located is not affected by the fact that the duty of such company to receive and handle all freight consigned over its line without discrimination arises from a State statute, rather than from a voluntary arrangement with connecting lines.

A terminal or belt railroad company which owns and leases tracks and switches in and around a city and entirely within one State, and

which has entered into a contract with the several roads entering the city, under which its property is entirely managed and operated by a board of managers composed of a member selected by each of such roads, who pay a fixed rental therefor, is a proper, but not a necessary, party to a suit against such roads for violating the interstate commerce act by discriminating against a business establishment located on its lines, and its joinder in such suit does not deprive a Federal court of jurisdiction.

Under the interstate commerce act a common carrier of interstate freight can not lawfully deny switch connections or service to one person, place, locality or kind of traffic which it affords to others similarly situated, and one who has built a switch connection with the track of a railroad, with the consent of the company, has an implied right to service at such switch, and, unless such service is limited, either expressly or by implication, he may lawfully insist that the carrier shall there receive and deliver all such freight as it customarily carries and for the receipt and delivery of which the switch is suitable and convenient.

REMOVAL OF INDICTED PERSONS TO OTHER JUDICIAL DISTRICTS FOR TRIAL.

In our last report we called attention to two conflicting decisions upon questions of jurisdiction in cases of alleged false billing or misrepresentation of freight. In the one case *Belknap* and in the other case *Ault* had been indicted in Texas for violating the act to regulate commerce by obtaining transportation to points in Texas at less than the regularly published rates through misrepresentation of freight articles shipped, commonly known as false billing. The shipment in the *Belknap* case was from Louisville, and the shipment in the *Ault* case was from Cincinnati. The United States district court sitting in Louisville held that the offense in the *Belknap* case was committed wholly in Kentucky, and therefore denied an application for a warrant removing the indicted shipper from Kentucky to Texas for trial.

The United States district court at Cincinnati, taking the view that the offense was a continuing one, said that the accused might be indicted and tried in either Ohio or Texas and granted the warrant of removal. From this decision in the *Ault* case an appeal was taken to the circuit court of appeals, the case being there known as *Davis et al. v. United States*. On October 2 that court reversed the ruling of the circuit court and discharged the appellants from custody (104 Fed. Rep., 136). In this case the court of appeals construed that part of section 10 which reads as follows:

Any person and any officer or agent of any corporation or company who shall deliver property for transportation to any common carrier, subject to the provisions of this act, or for whom as consignor or consignee any such carrier shall transport property, who shall knowingly and willfully, by false billing, false classification, false weighing, false representation of the contents of the package, or false report of weight, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent or agents, obtain transportation for such property

at less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject for each offense to a fine of not exceeding \$5,000 or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court.

The court held that such an offense is not one which requires the transportation of the property to its destination before it is complete, and which may, therefore, under Revised Statutes, section 731, be prosecuted either in the district where the shipment is made or in that where it terminates, but that the gist of the offense is the fraudulent act by means of which the lower rate is obtained, and the offense is complete where such act has been committed, the property delivered for transportation, and the contract for the illegal rate secured, and can only be prosecuted in that district.

If such is the law, the Commission is quite content with this disposition of the question, particularly as the court of appeals in arriving at its conclusion held that the offense is completed upon delivery of the freight for transportation. This operates to bring within the terms of the statute those numerous cases of false billing or misrepresentation which are constantly being detected by inspection bureaus established by the carriers in various sections of the country. It has been contended hitherto that correction of the rate in these cases resulted in taking the act of the shipper out of the class of offenses made criminal under the statute. In the view of the court of appeals this is not so. It says:

Ordinarily a delivery to the carrier is a delivery to the consignee. Every act which the consignor can do about the goods, all representations which he can make concerning them, the weight and classification thereof, are complete, and the goods turned over to the carrier for the consignee. Then the crime has been accomplished which the statute seeks to punish, namely, obtaining by the shipper of transportation at rates which others in a similar business, who pay the regular rates, do not secure. If the transportation must be to the point of destination, then an unforeseen accident, which might prevent the carrying of the goods through, would condone the offense, although the accused had committed every act and obtained everything the statute requires in order to make out the offense. If such is the transportation contemplated in the act, then the discovery of the fraud by the carrier, after carriage partially completed, with consequent refusal to take the goods to their destination, will render the crime incomplete. If the goods are accidentally lost, is the crime any the less committed when all the acts of the accused, with the intent and purpose to defraud, have concurred to complete the offense? We do not think such was the intent and purpose of Congress in enacting this law.

CONSIDERATIONS OF COMMERCIAL NECESSITY IN ESTIMATING JUST AND REASONABLE RATES.

In *Railroad and Warehouse Commission of Minnesota v. Minneapolis & St. Louis Railway Company et al.* (17 Am. & Eng. R. R. Cas., N. S., 630) the supreme court of Minnesota had occasion to consider methods
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of determining reasonable rates, and among others the making of rates in accordance with commercial conditions and circumstances. The ruling of the court in this respect was, in substance, that, when considering the reasonableness of rates, the Commission and the courts are justified in taking into consideration what is known as a "commercial necessity"—namely, the application of principles when fixing rates which are forced upon common carriers by various conditions and circumstances and are in common practice among them, a business policy which actuates and influences the carriers themselves to disregard a rule of strict comparison and strict equality as between bulk, weight, or value, as well as distance of carriage. The court further said:

This rule has constantly been recognized and acted upon by railroads, and has often been referred to and countenanced by the Interstate Commerce Commission when considering the question of long and short hauls. It is this rule which governs when considering the long haul as against the short and permits the higher rate per mile for the latter, and it also allows a greater rate to be charged upon certain classes of freight than upon other classes where there is no material difference in weight, bulk, value, or cost of transportation.

THE KENTUCKY RAILROAD COMMISSION LAW.

The railroad law of Kentucky provides that upon complaint of extortionate rates, or when the State Commission shall receive information or have reason to believe such rates are being charged, it shall speedily hear the matter, giving the company complained of not less than ten days' notice, by letter mailed to an officer or an employee, stating the time and place of hearing and the nature of the complaint; and after hearing the parties, if the Commission shall determine that the company is or has been guilty of extortion, such Commission shall fix a just and reasonable rate which the company may thereafter charge for its service. It is further provided that charging any higher rate than the rate so fixed by the Commission shall be deemed extortion and render the company or officer or agent imposing such greater charge liable to a fine of from \$500 to \$1,000, with higher money penalties for subsequent offenses. The United States circuit court for the district of Kentucky held, on July 16, 1900, in *Louisville & Nashville R. Co. v. McChord et al.* and three other cases, that this law is in violation of the Constitution of the United States (103 Fed. Rep., 216). The decision of the court is based principally upon the following grounds stated in the opinion:

First, because any order made by the Commission thereunder fixing a rate is not uniform in its operation throughout the State, but applies to one company alone, and thus denies to such company the equal protection of the laws; second, because any change in a rate established by a railroad company having been made to depend on a precedent decision that it has been guilty of extortion, and to follow such decision as a penalty, such company is entitled to a judicial determination of that question, and such determination by a nonjudicial body, left to its own discretion as to what

shall constitute extortion, and authorized to act merely upon a notice sent by mail to any employee of the company, does not constitute due process of law, nor does the act give the courts, in subsequent criminal proceedings instituted thereunder, any power to review such decision or to determine whether the rate fixed by the commission is reasonable and just. Such act is further invalid as to the Louisville & Nashville Railroad Company, whose charter fixes maximum rates which it may charge, because, without attempting to repeal such charter, it empowers the railroad commission to subject the company to criminal prosecution and heavy punishment for charging the rates therein authorized.

The case is now pending on appeal in the Supreme Court of the United States.

STATISTICS OF RAILWAYS.

FINAL REPORT FOR THE YEAR ENDING JUNE 30, 1899.

Following is an abstract of the Twelfth Statistical Report of the Interstate Commerce Commission, prepared by its statistician, being a report for the year ending June 30, 1899:

MILEAGE.

On June 30, 1899, the total single-track railway mileage in the United States was 189,294.66 miles, an increase during the year of 2,898.34 miles being shown. This increase is greater than for any other year since 1893. The States and Territories which show an increase in mileage in excess of 100 miles are Alabama, Arkansas, Georgia, Louisiana, Michigan, Minnesota, Pennsylvania, Texas, Arizona, New Mexico, and Oklahoma. Practically all of the railway mileage of the country is covered by reports made to the Commission, the amount not covered being 1,759.98 miles, or 0.93 per cent of the total single-track mileage. The aggregate length of railway mileage, including tracks of all kinds, was 252,364.48 miles. The distribution of this aggregate mileage was as follows: Single track, 189,294.66 miles; second track, 11,546.54 miles; third track, 1,047.37 miles; fourth track, 790.27 miles; yard track and sidings, 49,685.64 miles.

CLASSIFICATION OF RAILWAYS.

The number of railway corporations included in the report on the Statistics of Railways in the United States was 2,049. Of this number 1,064 maintained operating accounts, 843 being classed as independent operating roads and 221 as subsidiary roads. Of roads operated under lease or some other form of contract, 323 received a fixed money rental, 171 a contingent money rental, and 274 were operated under some form of agreement or control not readily classified. The operated mileage of roads merged, reorganized or consolidated during the year was 5,846.35 miles. The corresponding figure for 1898 was 7,220.42 miles.

EQUIPMENT.

There were 36,703 locomotives in the service of the railways on June 30, 1899, or 469 more than the year previous. Of the total number reported, 9,894 are classed as passenger locomotives, 20,728 as freight locomotives, 5,480 as switching locomotives, and 601 are not classified.

The total number of cars of all classes in the service of the railways on June 30, 1899, was 1,375,916, an increase of 49,742 being shown in this item. Of the total number, 33,850 are assigned to the passenger service, 1,295,510 to the freight service, and 46,556 to the direct service of the railways. It should be understood, however, that cars owned by private companies and firms used by railways are not included in the returns made to the Commission. The report under review contains summaries intended to indicate the density of equipment and the extent to which it is used. It appears that the railways in the United States used on the average 20 locomotives and 734 cars per 100 miles of line; that 52,878 passengers were carried and 1,474,765 passenger miles accomplished per passenger locomotive; and that 46,303 tons of freight were carried and 5,966,193 ton miles accomplished per freight locomotive. All of these items show an increase when compared with corresponding items for the preceding year ending June 30, 1898. There was also a decrease in the number of passenger cars per 1,000,000 passengers carried, and a decrease in the number of freight cars per 1,000,000 tons of freight carried.

Both locomotives and cars being embraced in the term equipment, it is observed that the total equipment of the railways on June 30, 1899, was 1,412,619. Of this number 808,074 were fitted with train brakes, the increase being 166,812; and 1,137,719 were fitted with automatic couplers, the increase in this item being 228,145.

Practically all locomotives and cars in the passenger service were fitted with train brakes; and of 9,894 locomotives assigned to that service 6,128 were fitted with automatic couplers. Nearly all passenger cars were fitted with automatic couplers. With respect to freight equipment, it is noted that nearly all freight locomotives were equipped with train brakes, and 45 per cent of them with automatic couplers. Of 1,295,510 cars in the freight service on June 30, 1899, 730,670 were fitted with train brakes and 1,067,338 with automatic couplers.

EMPLOYEES.

The number of persons employed by the railways of the United States, as reported on June 30, 1899, was 928,924, or an average of 495 employees per 100 miles of line. As compared with the number employed on June 30, 1898, there was an increase of 54,366, or 21 per 100 miles of line. From the classification of these employees it appears that there were 39,970 enginemen, 41,152 firemen, 28,232 conductors, and 69,497 other trainmen. There were 48,686 switchmen,

flagmen, and watchmen. Upon the basis of special returns made to the secretary of the Commission it appears that the number of switchmen, flagmen, and watchmen included in this aggregate could fairly be assigned in the proportion of 6, 3, and 2, respectively.

Disregarding 9,334 employees not assigned to the four general divisions of employment, it is found that the services of 34,170 employees were required for general administration, 287,163 for maintenance of way and structures, 180,749 for maintenance of equipment, and 417,508 for conducting transportation.

The report contains a statement of the average daily compensation of eighteen classes of employees for eight years, beginning with 1892. A summary in the report also gives the total compensation of more than 99 per cent of railway employees for the fiscal years 1895 to 1899. During the year ending June 30, 1899, \$522,967,896 were paid in wages and salaries, an amount \$77,459,635 in excess of that paid during 1895. The compensation of the employees of railways for 1899 represents 60 per cent of their operating expenses, and 40 per cent of their gross earnings.

CAPITALIZATION AND VALUATION OF RAILWAY PROPERTY.

The amount of railway capital outstanding on June 30, 1899, was \$11,033,954,898. This amount, assigned to a mileage basis, represents a capitalization of \$60,556 per mile of line. Of this amount of capital, \$5,515,011.726 existed in the form of stock, of which \$4,323,300,969 was common stock, and \$1,191,710,757 preferred stock. The amount which existed in the form of funded debt was \$5,518,943,172. This amount of funded debt was classified as mortgage bonds, \$4,731,054,376; miscellaneous obligations, \$485,781,695; income bonds, \$260,048,753; and equipment trust obligations, \$42,058,348. The amount of current liabilities not included in the foregoing capital statement was \$554,330,022, or \$3,042 per mile of line.

The amount of capital stock paying no dividend was \$3,275,509,181, or 59.39 per cent of the total amount outstanding. The amount of funded debt, excluding equipment trust obligations, which paid no interest, was \$572,410,746. Of the stock paying dividends 11.91 per cent of the total amount outstanding paid from 1 to 4 per cent; 7.84 per cent paid from 4 to 5 per cent; 7.41 per cent paid from 5 to 6 per cent; 4.21 per cent paid from 6 to 7 per cent, and 5.18 per cent paid from 7 to 8 per cent. The amount of dividends declared during the year ending June 30, 1899, was \$111,009,822, which would be produced by an average rate of 4.96 per cent on the stock on which some dividend was declared. The amount of mortgage bonds paying no interest was \$374,460,358, or 7.92 per cent; of miscellaneous obligations, \$70,422,403, or 14.50 per cent; and of income bonds, \$127,527,985, or 49.04 per cent.

PUBLIC SERVICE OF RAILWAYS.

The number of passengers carried during the year ending June 30, 1899, as shown in the annual reports of railways, was 523,176,508, showing an increase for the year of 22,109,827. The number of passengers carried 1 mile—that is, passenger mileage—during the year was 14,591,327,613, there being an increase in this item of 1,211,397,609. There was an increase in the density of passenger traffic, as the number of passengers carried 1 mile per mile of line in 1899 was 77,821, and in 1898, 72,462.

The number of tons of freight carried during the year was 959,763,583, an increase of 80,757,276 being shown. The number of tons of freight carried 1 mile—that is, ton mileage—was 123,667,257,153. The increase in the number of tons carried 1 mile was 9,589,680,848. The number of tons carried 1 mile per mile of line was 659,565. These figures show an increase in the density of freight traffic of 41,755 tons carried 1 mile per mile of line.

In the report is inserted a summary of freight traffic analyzed on the basis of a commodity classification, and also a summary indicating in some degree the localization of the origin of railway freight by groups of commodities.

The average revenue per passenger per mile for the year ending June 30, 1899, was 1.925 cents; for the preceding year it was 1.973 cents. The revenue per ton of freight per mile was 0.724 cent, while for 1898 it was 0.753 cent. An increase in mileage earnings is shown for both passenger and freight trains. The average cost of running a train 1 mile increased nearly 3 cents as compared with 1898. The percentage of operating expenses to earnings shows a slight decrease as compared with the previous year.

EARNINGS AND EXPENSES.

For the year ending June 30, 1899, the gross earnings from the operations of the railways in the United States, covering an operated mileage of 187,534.68 miles, were \$1,313,610,118, being \$66,284,497 more than for the preceding fiscal year. The operating expenses were \$856,968,999, the increase in this item being \$38,995,723. The details of gross earnings were as follows: Passenger revenue, \$291,112,993—increase as compared with the preceding year, \$24,142,503; mail, \$35,999,011—increase, \$1,390,659; express, \$26,756,054—increase, \$847,979; other earnings from passenger service, \$7,687,363—increase, \$463,363; freight revenue, \$913,737,155—increase, \$37,009,436; other earnings from freight service, \$4,261,804—decrease, \$421,401; other earnings from operation, including unclassified items, \$34,055,738—increase, \$2,851,958. Gross earnings from operation per mile of line were \$250 more than for the year ending June 30, 1898, being \$7,005.

The operating expenses of the railways for the year under considera-

tion were assigned as follows: Maintenance of way and structures, \$180,410,806; increase, \$7,095,848. Maintenance of equipment, \$150,-919,249; increase, \$8,294,387. Conducting transportation, \$486,159,-607; increase, \$21,485,331. General expenses, \$38,676,883; increase, \$2,200,197; undistributed, \$802,454. The operating expenses for the year in question were \$4,570 per mile of line, or \$140 more than for the previous year. An analysis of operating expenses for the year ending June 30, 1899, according to the fifty-three accounts embraced in the official classification, appears in the report, with a statement of the percentage of each item in the classified operating expenses for the years 1895 to 1899, inclusive.

The income from operation, or the amount of gross earnings remaining after the deduction of operating expenses, generally designated as net earnings, was \$456,641,119, an increase as compared with the year ending June 30, 1898, of \$27,288,774. The average amount per mile of line for 1899 was \$2,435, and for 1898 \$2,325. The amount of income received from sources other than operation was \$148,713,983. This amount covers the following items: Income from lease of road, \$96,352,295; dividends on stocks owned, \$20,104,521; interest on bonds owned, \$11,334,690; miscellaneous income, \$20,922,477. The total income of the railways, \$605,355,102—that is, the income from operation increased by the income from other sources—is the item from which fixed charges and analogous items are deducted in order to reach the amount available for dividends. Total deductions from income amounted to \$441,200,289, leaving \$164,154,813 as the net income of the year available for dividends or surplus.

The amount of dividends declared during the year, including \$80,114 other payments from net income, was \$111,089,936, leaving as the surplus from the operations of the year \$53,064,877, the corresponding surplus for the year ending June 30, 1898, being \$44,078,557.

The deductions from income, \$441,200,289, already mentioned, comprise the following items: Salaries and maintenance of organization, \$595,192; interest accrued on funded debt, \$251,158,087; interest on current liabilities, \$7,102,847; rents paid for lease of road, \$94,406,737; taxes, \$46,337,632; permanent improvements charged to income account, \$13,070,045; other deductions, \$28,529,749.

In the consideration of the foregoing figures pertaining to income and expenditure it should be held in mind that annual reports of two kinds are made to the Commission by railway companies. Operating reports are filed by such companies as maintain full operating accounts and financial reports by such companies as have leased their property to others for operation, their own income, apart from that derived from investments, being the annual fixed or contingent rental paid by their lessees, from which they make their own disbursements. From this fact certain items of income and expenditure are necessarily dupli-

ated in comprehensive summaries which are compiled from reports of both classes. These conditions are fully explained by the statistician in his report, which clearly indicates the extent to which duplications on the side of income and of expenditure exist. As a matter of interest the report contains also an income account of the railways of the United States considered as a system. The figures contained in this account are such as would be presented were the railways owned by the Government—operations, tariffs, and expenses remaining the same. They eliminate intercorporate payments by making use, where necessary, of balance amounts.

The income account in the form described is here inserted.

Comparative income account of the railways of the United States, considered as a system, for the years ending June 30, 1899 and 1898.

Item.	Amount.				
	1899.		1898.		Increase.
Gross earnings from operation	\$1,313,610,118	-----	\$1,247,325,621	-----	\$66,284,497
Clear income from invest- ments	26,044,996	-----	21,937,636	-----	4,107,360
Gross earnings and in- come		\$1,339,655,114		\$1,269,263,257	70,391,857
Operating expenses	856,968,999	-----	817,973,276	-----	38,995,723
Salaries and maintenance of leased lines	595,192	-----	443,325	-----	151,867
Total		857,564,191		818,416,601	39,147,590
Net earnings and in- come		482,090,923		450,846,656	31,244,267
Net interest on funded debt..	241,657,535	-----	237,578,706	-----	4,078,829
Interest on current liabilities.	7,102,847	-----	7,073,953	-----	28,894
Taxes	46,337,632	-----	43,828,224	-----	2,509,408
Total		295,098,014		288,480,883	6,617,131
Available for dividends, ad- justments, and improve- ments		186,992,909		162,365,773	24,627,136
Net dividends		94,273,796		83,995,384	10,278,412
Available for adjust- ments and improve- ments		92,719,113		78,370,389	14,348,724

ROADS OPERATED BY RECEIVERS.

The number of railways in the hands of receivers on June 30, 1899, was 71, there being a net decrease of 23 as compared with the corresponding date of the previous year. The number of railways placed in charge of receivers during the year was 16, and the number removed from their management was 39. The operated mileage of the roads under receivers on June 30, 1899, was 9,853.13 miles, of which 7,225.62 miles were owned by them. Of the roads in the hands of receivers on the date named, 10 had an operated mileage in excess of 300 miles, 10 between 100 and 300 miles, and 40 less than 100 miles. Complete returns for roads in the custody of the courts are

not always available, but it appears that the capital stock represented by railways under receiverships on June 30, 1899, was about \$220,-210,688; funded debt, \$306,486,740, and current liabilities \$59,180,823. These figures show a decrease of \$43,926,703 in capital stock represented as compared with the previous year, and of \$16,405,951 in funded debt.

RAILWAY ACCIDENTS.

The total number of casualties to persons on account of railway accidents during the year ending June 30, 1899, was 51,743. The aggregate number of persons killed as a result of railway accidents during the year was 7,123 and the number injured was 44,620. Of railway employees 2,210 were killed and 34,923 were injured during the year covered by this report. With respect to the three general classes of employees, these casualties were divided as follows: Trainmen, 1,155 killed, 16,663 injured; switchmen, flagmen, and watchmen, 273 killed, 2,992 injured; other employees, 782 killed, 15,268 injured. The casualties to employees resulting from coupling and uncoupling cars were, persons killed, 260; injured, 6,765. The corresponding figures for the preceding year were, killed, 279; injured, 6,988.

The casualties from coupling and uncoupling cars are assigned as follows: Trainmen, killed, 180; injured, 5,055; switchmen, flagmen, and watchmen, killed, 74; injured, 1,533; other employees, killed, 6; injured, 177. The casualties resulting from falling from trains and engines are assigned as follows: Trainmen, killed, 337; injured, 3,053; switchmen, flagmen, and watchmen, killed, 60; injured, 377; other employees, killed, 62; injured, 540. The casualties to the same three groups of employees caused by collisions and derailments were as follows: Trainmen, killed, 280; injured, 1,713; switchmen, flagmen, and watchmen, killed, 14; injured, 115; other employees, killed, 40; injured, 325.

The number of passengers killed during the year was 239, and the number injured was 3,442. Corresponding figures for the previous year were 221 killed and 2,945 injured. In consequence of collisions and derailments 82 passengers were killed and 1,557 passengers were injured during the year embraced by this report. The total number of persons, other than employees and passengers, killed was 4,674; injured, 6,255. These figures include casualties to persons classed as trespassers, of whom 4,040 were killed and 4,730 were injured. The total number of persons killed at highway crossings was 693; injured, 1,125; distributed as follows: Employees, 19 killed, 38 injured; passengers, 2 killed, 17 injured; other persons trespassing, 170 killed, 168 injured; not trespassing, 502 killed, 902 injured. The number of persons killed at stations was 443; injured, 3,306. This statement covers: Employees, 83 killed, 2,139 injured; passengers, 37 killed, 580 injured;

other persons trespassing, 282 killed, 444 injured; not trespassing, 41 killed, 143 injured. The summaries containing the ratio of casualties show that 1 out of every 420 employees was killed, and 1 out of every 27 employees was injured.

With reference to trainmen, including in the term engine-men, firemen, conductors, and other trainmen, it is shown that 1 was killed for every 155 employed, and 1 was injured for every 11 employed. One passenger was killed for every 2,189,023 carried, and 1 injured for every 151,998 carried. Ratios based upon the number of miles traveled, however, show that 61,051,580 passenger miles were accomplished for each passenger killed, and 4,239,200 passenger miles accomplished for each passenger injured.

CONCLUSION.

In the conclusion of his report the statistician repeats his previous recommendations to the effect that reports should be secured from express companies engaged in interstate traffic; that reports should be secured from corporations and companies owning rolling stock which is used in interstate traffic, and also special reports from corporations and companies owning depot property, stock yards, elevators, and the like; and that reports should be secured from carriers by water, so far as their business is interstate traffic.

It is further stated that nothing has occurred in the administration of the statistical division of the Commission to weaken the confidence expressed in former reports in the proposal that there should be established under the jurisdiction of the Commission a bureau of statistics and accounts, which shall have as its chief purpose the establishment of a uniform system of accounts for the carriers, and that it would be desirable also, should the Commission see fit, to provide for a monthly report of the earnings and expenses of operating railways.

PRELIMINARY REPORT ON THE INCOME AND EXPENDITURES OF RAILWAYS FOR THE YEAR ENDING JUNE 30, 1900.

The "Preliminary report on the income account of railways in the United States for the year ending June 30, 1900," appears in Appendix F. In this report the results of the operation of the railways during the last fiscal year are concisely presented.

This report is compiled from the returns of 701 operating roads, being the number on file prior to November 26. The mileage covered is 190,406.09 miles, being 2,871.41 miles in excess of that for which returns were compiled in the final report for the year ending June 30, 1899. This report shows the earnings and expenses for about 98 per cent of the operated mileage of the country. The total gross earnings of the railways covered by this preliminary report for the year ending

June 30, 1900, were \$1,480,673,054. The total gross earnings shown in the final report for the year ending June 30, 1899, were \$1,313,610,118. Comparison with this figure shows an increase in gross earnings for the year of \$167,062,936. Of the gross earnings, the passenger service contributed \$396,860,760, or 26.80 per cent of the total, and the freight service \$1,048,268,875, or 70.80 per cent of the total.

The gross earnings per mile of line for the year, as shown in this report, were \$7,776. This average is higher than for any other year for which reports have been made to the Commission. In this respect the year 1892, for which the average was \$7,213, most nearly approaches 1900. The passenger earnings per mile of line were \$2,084, and the freight earnings per mile of line were \$5,505. The earnings per mile of line for the passenger service do not reach the average of 1892, but the freight earnings per mile of line exceed those of that year by \$559. The operating expenses for the year covered by the report were \$956,814,142, which gives an average expenditure per mile of line of \$5,025. This shows an increase of \$455 per mile of line as compared with the previous year, against an increase in gross earnings of \$771 per mile of line.

The net earnings of the railways as shown in this preliminary report were \$523,858,912. The corresponding net earnings for the preceding year were \$450,748,765. The total income of the railways, including \$60,675,700 income from sources other than operation, was \$584,534,612. This is the sum from which interest on bonds, taxes (\$44,396,165), permanent improvements charged to income account, dividends, and miscellaneous items must be deducted to ascertain the surplus from the operations of the year under consideration. The total deductions from income, including all of the items mentioned, except dividends, were \$395,811,056. The amount of dividends declared was \$109,400,147. For purposes of comparison the dividends declared by the corresponding roads for the year 1899 were found to be \$81,844,759, or some \$28,000,000 less than for 1900. The surplus from operations of the year ending June 30, 1900, as appears from the preliminary report, was \$79,323,409. The surplus for the preceding year as shown in the final report was \$53,064,877.

It should be borne in mind that the amount of dividends shown in this preliminary report, which is confined to operating roads, is less than the amount which will be shown in the final report for the year, on account of the fact that the final report includes dividends paid to stockholders through the agency of leased lines.

When it is remembered that the surplus for the year ending June 30, 1893, fell to \$8,116,745, and that the years ending June 30, 1894, 1895, and 1897, closed with a deficit, it is possible to appreciate not only the present prosperity of the railway system, but the wide fluctuations to which this industry is subjected.

SAFETY APPLIANCES.

The last annual report called attention to the safety appliance act and stated that the Commission, under the authority conferred by section 7 of that law, had extended the time when its provisions respecting automatic couplers and air brakes should take effect until August 1, 1900. The principal reasons for granting this extension were also set forth, and the opinion was expressed that by that time the carriers would be able to provide the required equipment. The safety appliance act in all its provisions, therefore, became effective on the 1st of August last, and, as far as can be ascertained, practically all roads in the United States have since then been using automatic couplers and air brakes in the operation of their trains. That portion of the law which fixed the standard height of drawbars and made necessary the application of hand holds and grab irons has been in operation for almost five years, and, as said by the Commission in former reports, the state of equipment in those particulars has shown approximately perfect compliance with the statute.

When consideration is given to the fact that during the time the railroads were equipping their cars with automatic couplers, the demands made upon them by an enormous traffic were constantly increasing, and that they were seriously embarrassed in their efforts to supply the needs of the shipping public, it is surprising to observe what the roads have accomplished in this direction; and when we take into account the vast amount of work made necessary and the rapidity with which the change from old appliances has been made without friction or cessation of business, the undertaking of the railroads stands as a monument to their energy, and marks an epoch in railway development.

It must be borne in mind that the Master Car Builders' Association and the American Railway Association had, prior to the passage of the law, urged the adoption of appliances which are in general use to-day. These organizations made new recommendations each succeeding year for the safety of employees and the economical operation of the roads.

The Government has not undertaken to decide either the particular coupler with which freight cars should be equipped, the number or location of hand holds and grab irons, the height of drawbars, or the number of cars to be provided with air brakes for the proper control of trains. All these matters were left to the determination of the carriers.

The law having been in full operation only about four months, its benefit in preserving the life and limb of employees can not yet be determined with much accuracy. From such of the public prints as were accessible, it is found that up to the 1st of December there were 864 casualties, 255 of which were fatal. Of the total number, it would appear that 618 were either purely accidental or resulted from appar-

ent carelessness, 229 were caused by defective appliances, and in 17 the causes were not indicated by the statements made; 482 occurred in the yards and 341 upon the road. Of these, 90 occurred in switching, and 234 in the operation of coupling. These, of course, are only a portion of the accidents which have occurred throughout the country, and it is hoped that the publication of these facts will impress upon railroad employees the necessity of exercising due caution in performing their work.

The making up and movement of trains will always be a very hazardous business, and death and injury thereby caused can not be wholly avoided. In this connection the Commission desires to invite attention to what was said in its last report to Congress, for the Commission believes it as necessary to inculcate care on the part of the men as it is for the railroads to keep their equipment in order. It was recently decided by the supreme court of Kansas that where there were two ways of doing a given thing connected with the operation of a train of which the employee had knowledge, it was the duty of the employee to adopt that method which was the least hazardous, and that his failure to adopt the safer method relieved the employer from liability for his injury, unless the employer had knowledge or apprehension of the employee's perilous position and made no effort to avoid injuring him.

In this case a workman, who had knowledge of a grossly negligent and wantonly reckless habit of his employer, voluntarily placed himself unnecessarily in a dangerous position whereby he received injuries resulting fatally, when there was a safer way to perform the duty known to the employee. The court held him guilty of contributory negligence. (*Beal v. A., T. & S. F. Ry. Co.*, 62 Pac. Rep., 321.) It will thus be seen that this court held that the rule of nonliability for contributory negligence in case of injuries recklessly inflicted does not apply when the injured person had or should have had knowledge of the grossly negligent habit or the impending reckless act and could have avoided the injury to himself by prudence and caution upon his own part.

On June 30, 1899, there were 928,924 persons on the pay rolls of the railways of the United States. During the year ending on that date accidents occurred to railway employees which resulted in death to 2,210 and in injuries of more or less serious character to 34,923.

In previous reports the opinion has been expressed that the relative number of casualties to railway employees engaged in certain lines of duty would continue to diminish on account of the use of safety appliances on railway equipment and of other means of protection to life and limb. Confining the statement to accidents incurred in coupling and uncoupling cars, it appears that the number of employees killed during the year ending June 30, 1899, was 260, showing a decrease of 19 from the previous year, and that the number injured was 6,765,

showing a decrease of 223, or a reduction of 242 in total casualties of this class.

There are no statistics from which it is possible to ascertain the exact number of men who are required by their employment to couple and uncouple cars. This is partly due to the fact that it has long been the general practice to group returns for switchmen, flagmen, and watchmen as one class, but, as was remarked in our preceding report, the business of flagmen and watchmen is not that of coupling and uncoupling cars. A reclassification of employees has been undertaken which it is expected will remedy the difficulty now existing in this respect. For present purposes of comparison, however, the following ratios have been obtained, in which it should be understood the word "trainmen" does not include enginemen and firemen, but does include switchmen, flagmen, and watchmen. Thus defined, the number of trainmen employed in 1893 to 1 killed was 349; to 1 injured, 13. The corresponding ratios for 1899 were—killed, 1 to 563, and injured, 1 to 22.

Since full returns of railways have not been made for the year ending June 30, 1900, certain data for 89 selected roads, representing roughly 70 per cent of the total operated mileage of the country, have been compiled, showing that the number of employees killed in coupling and uncoupling cars was 231, making an increase of 32 in the number killed as compared with returns for the corresponding roads for 1899. The injuries resulting from this cause, however, were only 4,019, showing a decrease as compared with the previous year of nearly 25 per cent, the injuries for 1899 having been 5,339. These figures appear in the following table:

Accidents incurred in coupling and uncoupling cars.

Year ending June 30—	Total number of employees.		Number of trainmen employed to one—	
	Killed.	Injured.	Killed.	Injured.
1893	433	11,277	349	13
1897	214	6,283	647	22
1898	279	6,988	518	21
1899	260	6,765	563	22

Year ending June 30—	Employees on 89 roads.		Number of trainmen employed to one—	
	Killed.	Injured.	Killed.	Injured.
1898	209	5,484	557	21
1899	199	5,339	591	22
1900	231	4,019	540	31

Ratio based on trainmen, other than enginemen and firemen, and including switchmen, flagmen, and watchmen.

In last year's report mention was made of the large number of persons killed or injured by falling from trains. The casualties from this

cause during the year ending June 30, 1898, were, killed, 473; injured, 3,859. For 1899 the fatal accidents were 459, as compared with 644 for 1893. The injuries not fatal were 3,970, as compared with 3,780 for the year 1893. It is believed that the accidents resulting from falling from trains will be greatly reduced in time through the general use of the train brake.

The table following is of interest in this connection:

Accidents caused by falling from trains and engines.

Year ending June 30—	Total number of employees.		Number of trainmen employed to one—	
	Killed.	Injured.	Killed.	Injured.
1893	644	3,780	354	60
1897	408	3,627	497	59
1898	473	3,859	480	57
1899	459	3,970	390	45

Number of trainmen includes enginemen, firemen, conductors, and other trainmen.

Comment was made in our last report upon the fact that the large increase in railway traffic had made great demands upon the equipment of the railways, resulting in the use of cars of such inferior character that they would not, under the ordinary demands of business, be employed in carrying freight. The increase in business also made necessary the employment of many additional men, a large proportion of whom were doubtless inexperienced and thus more liable to accident than those regularly employed.

The ton mileage for 1899 was 123,667,257,153, or 9,589,680,848 greater than the preceding year. The ton mileage for 1894 was 80,335,104,702. The number of tons carried in 1899 was 959,763,583. The average number of tons carried per man employed in 1899 was 1,033, the corresponding figure for 1893 having been 853.

The attention of Congress has often been called to the serious loss of life and limb attendant upon travel and service in the operation of railways. Every year has shown improvements in the management of roads, in added comforts for travelers and new precautions for their safety, as well as in hedging about the dangerous employment of railway servants with better safety appliances and more careful methods. Much of this is the outgrowth of strictly business progress. The selfish interest of carriers alone would suggest so much as a matter of economy and profit, to say nothing of the claims of humanity. To this incentive must be added those general provisions of law which Congress has enacted looking to uniform equipment, so that nothing may be left undone to protect the lives of faithful employees and helpless patrons. But constant vigilance is the price of safety, and equipment is not to be relied upon unless kept up to a high standard.

Faulty appliances lull the employee to a false sense of security while they increase the hazard of employment.

To the end that every precaution may be taken and that no careless, or indifferent, ignorant, or selfish individual may be permitted to endanger his fellows, a system of public supervision should be maintained and a close inspection made of the rolling stock in service, so that no wear or breakage may go unnoticed and unremedied. It is not proposed that such public inspection shall in any respect interfere with the duties of the operating companies respecting repairs, but that the inspectors shall see that cars in use are equipped with safety appliances, and those appliances kept in the condition contemplated by the provisions of law intended to promote the safety of traveler and employee. Such inspection will require some expenditure of money—small, however, in comparison with the interests affected.

Any appropriation of the public funds must be justified by the object to be attained. The following statement of the cost of Government operations for similar purposes illustrates the propriety of the proposed inspection system:

The Life-Saving Service on our coast in 1899 was maintained with a net expenditure of \$1,528,895. In that period 63 lives, and 72 vessels, valued at \$1,851,990, were lost. In the Light-House Establishment 3,985 persons were employed, at a cost of \$3,118,833.50, for the purpose of saving life and property at sea; and nearly 200 employees and \$331,678.33 were employed in the Steamboat-Inspection Service. The number of vessels inspected during the year ending June 30, 1900, was 9,253, while the number of accidents was 33, and the total loss of life 206. During the year ending June 30, 1899, there were 51,743 accidents on the railroads of the United States. Of that number 37,133 were to employees, including 2,210 killed. These railroads carry more than a half billion passengers and nearly a billion tons of freight annually.

It is not claimed that such precautions as may be taken by railway managers and such inspection as may be possible by the Government agents will do away with all fatalities, all accidents, and all dangers; but each effort is another step in that direction, and it is believed that the inspection proposed largely tends to minimize the danger to railroad employees and increase the safety of the traveler.

Recognizing that a law of this character can only be made effective by a system of supervision and inspection, Congress appropriated \$15,000 at its last session to enable the Commission to keep informed regarding compliance with the safety-appliance act and to render its requirements effective. This sum is mainly expended in the employment of inspectors.

These men have been engaged only after the strictest inquiry into their knowledge of the subject and their capabilities for this particular

work; each of them has had several years' experience in the operation of trains. Their duties require them to inspect personally the equipment of all the roads, as far as the limited number of inspectors will permit, and to report to the Commission not only failures to comply with the law, but all imperfections in railway equipment which relate to the requirements for the safety of employees established by the Master Car Builders' Association and the American Railway Association. One prerequisite of the employment of such inspectors is intimate knowledge of the requirements which the railroads, through their associations, have established. The reports made by the inspectors are not, therefore, solely confined to failures to comply with the law; they include everything which tends, in their opinion, to increase the risk of the people employed.

When received, these reports are immediately transmitted to the presidents of the railroad companies concerned, and their attention called to any neglect of their subordinates to conform with the requirements of the law or the rules established by themselves. This course of procedure has proved highly salutary, for in every case these communications have received favorable replies, while subsequent examination of the equipment has shown that the defects have been repaired and more stringent orders issued by the railroad officials. The inspectors have been instructed to make suggestions and statements regarding the condition of equipment and anything relative thereto which they believe to be of value. From these reports the following conclusions have been drawn:

The inspections have served to give a general idea of the conditions existing, and this has been of great value. The inspectors' reports indicate that violations of the law consist chiefly in failure to keep the equipment up to the required standard, including automatic couplers which are operative and in such working order that the men need not go between the cars. Inspection by the Government has undoubtedly proved beneficial not only to the employees interested, but also to the railroad companies. It has acquainted the railway presidents with conditions existing on their respective roads, of which they probably would not have been apprised in any other way. The air brake and the automatic coupler are not merely measures of safety. Without them the heavy freight train of to-day could not be successfully handled and the decreased cost of operation which has resulted from the use of larger cars and more powerful locomotives would not have been attained. Consequently these appliances have been most potent agencies in bringing about the great increase in the capacity of railroad trains during the past decade.

Railway equipment throughout the country is now interchangeable by reason of the general application of automatic couplers and brakes and standard-height drawbars required by the safety appliance act.

It is reported, however, that probably 20 per cent of the couplers now used become nonautomatic through failure to keep them in proper repair. While in such condition it is agreed that they are far more dangerous to the men employed in handling the cars than the old link and pin coupler. When an accident in coupling now occurs it is said there is more probability of its resulting fatally. Again, when it was known that the men had to go between the cars to couple or uncouple it is claimed that engineers exercised greater care than they do now with couplers in use which are supposed to work automatically. These considerations indicate the necessity for most careful attention to the condition and repair of the appliances provided.

When railway officials reach the point of requiring car inspectors to reject any car having defective couplers or other defective safety appliances, as they now do on account of imperfect running gear, the dangers of railway operation will be largely reduced. It is understood that the most common defects in couplers are disconnected pin chains and loose brackets.

Under the instructions of the Commission inspections have been openly made, the inspector always introducing himself to the management and disclosing his identity. Railway officials generally are much interested in this inspection work, and the majority of them appear surprised to learn that so many automatic couplers are in the condition found by the inspectors. A few were inclined at first to take advantage of the technicality that the law does not apply to engines since it specifies only cars, but when their attention was called to the fact that a coupler on an interstate car ceases to be automatic the moment a link is inserted for the purpose of coupling to an engine or a car used in State traffic the necessity for equipping such engine or car with the automatic coupler was generally conceded. Automatic couplers, therefore, are rapidly being applied upon locomotives and tenders. The failure of the law to require specifically this may have been an oversight, but the roads are generally recognizing the necessity of such equipment, and no amendment to the law is recommended in this particular.

Some few roads have claimed exemption from the law on the ground that their operation was confined to the limits of a single State, and it has been suggested that the Federal law should be supplemented by similar enactments in States where such laws do not now exist.

From the inspectors' reports it is learned that upon many of the roads the smaller parts of the automatic couplers are neglected—such as cotter keys, clevis chains, and knuckle pins—and the opinion is expressed that the tail end of the knuckle and the locking pin or block should be lubricated. This practice would result in less force being required to couple by impact and would extend the life of these parts. Reference is also made in the reports to an instance where both narrow

and standard gauge cars are used on the same train. This makes necessary the use of the 3-link coupler, which is especially dangerous. Another inspector asserts that there are too many different kinds of couplers in use and that they are not placed on the cars with any uniformity as to the location of uncoupler rods, thereby causing great danger in coupling and uncoupling cars, in many cases the train men being required to run along with the car, holding the lever up.

Among the defects observed are the following: Coupler chains too long or too short; rods not adjusted to locks, and often no locks at all; short handles; rods placed on wrong side of the car, and coupler not properly secured to the car. One report recommends that dead-blocks on each side of drawheads be dispensed with and that engineers be compelled to give warning signal before putting on air brakes. Failure to give such warning is alleged to be the cause of so many brakemen being thrown from the cars.

It is also stated that numerous accidents occur from carelessness due to men going between cars unnecessarily to raise the chain with their hands; that men have got into the habit of doing this instead of using the lever because many of the chains are too long; that many roads use chains made of split links and S hooks, which should be discontinued for the solid link with the clevis.

It is further reported that with too many kinds of couplers, the parts of which are not interchangeable by reason of being out of order, the link and pin must be used; that the practice of carding defects furnish the men with an opportunity to be negligent; that the practice of not using more than 40 per cent of air in trains and scattering air-brake cars through the train instead of placing them next to the engine, should be condemned. Suggestion is also made that all trains should be inspected by an air-brake inspector and not by the ordinary trainman; that more care should be taken, not only in the inspections, but in repairing defects when found, and, further, that a larger percentage of cars should be equipped with air brakes. These are not recommendations of the Commission, but are deemed worthy of consideration by those interested as suggestions of men familiar with railway equipment.

There has been criticism of the couplers now in general use for the alleged reason that they are not really automatic in many conditions and circumstances of railway operation and because failure to make proper repairs renders the coupler a menace to the employee rather than an instrument of safety. Already an agitation has been begun for the use of other and better appliances. With this end in view the Commission has been asked to order tests of automatic couplers in order to decide which coupler is best adapted to the general requirements of operation. The Commission has given no encouragement to such requests and has replied that no provision is found in the law

for such examination or any authority to decide in favor of a particular device, that the law has only recently gone into full operation, and that there are as yet no sufficient data to show the alleged inefficiency of the devices now in use, and that further time is necessary to determine the truth or falsity of the statements made by those who are taking part in this movement. It is proper to state that none of the agitation in this respect or suggestions of change have come from organizations of railway employees or from any of the men whose employment renders them personally interested.

It is believed that the complaints made result largely from the fact that these appliances, as before stated, are not maintained in proper condition; but we are confident that the system of inspection which has been adopted will result ultimately in greatly remedying trouble in this respect. The act properly leaves to the railroads the question of what particular devices should be purchased and applied to accomplish the desired result, namely, the saving of life and limb of employees and travelers. Certain it is that the improvements which have taken place in safety appliances, as well as other railway facilities, have been through the untiring efforts of those engaged in railroad operation under the law, and they have been adopted, not only with a view to the safety of employees and travelers, but as necessary to the successful conduct and management of a modern railway.

Since the law went into effect no complete or accurate information regarding accidents has been obtainable. As the railroads are merely required to make annual returns of the casualties to their employees, the value of the law can only be matter of conjecture for a year at least. It may well be repeated that a large number of the accidents to employees can only be attributed to carelessness.

Impressed with the necessity of particularly directing the attention of the employees to this subject, the secretary of the Commission addressed a letter to the subordinate branches of various railway organizations calling attention, among other matters, to the necessity of greater care and caution on the part of railway employees in the discharge of their duties. It was also stated to be the understanding of the Commission that section 8 of the act does not fully release them from responsibility for contributory negligence. It was also suggested that reports of accidents should be made by the organizations to the Commission, with a view of minimizing, as much as possible, the need of resorting to the courts for enforcing the law, and so avoiding the friction and consequent hostility which frequent litigations of this character must inevitably engender. No prosecutions under the act have yet been found necessary. In cases where we have found it necessary to call attention to defects in appliances or in their operation the railroad managers have so far readily complied with not only the letter but the spirit of the law, and have not been inclined to cavil about the application of the statute in doubtful cases.

In any estimate of reduction in the number of accidents due to the adoption of these safety appliances the changes in conditions since 1893, when the law was enacted, must be taken into account. At that time the average train load was about 184 tons. In 1899 it had risen to an average of 243½ tons. The small cars and lighter locomotives then in general use have given place to much heavier equipment. The weight and speed of freight trains have been constantly increasing. Steel cars have been introduced, capable of carrying 50 tons each. The use of heavy cars and engines in the same trains with old wooden and lighter cars subjects the draft rigging and couplers of these lighter cars to unusual strain, and results in many accidents which formerly would not have occurred. Of course the risk to the men employed in handling trains of cars of mixed capacity and greatly varying strength is greatly increased and this was a risk the employee was not called upon to take in 1893, when the law was enacted. The law can only reach its highest value and efficiency when all interested—the railroads, the employees, and the Commission—are working to the common end of securing from its operation the greatest practical benefits.

Following the lead of the United States, a safety appliance act was passed by the British Parliament in July last. A communication received from Mr. F. J. S. Hopwood, railway secretary of the board of trade, states that this act confers full powers upon the board of trade to order the use or disuse of any such appliance and to make rules governing every form of dangerous railway working.

THE COMMISSION'S LIBRARY.

The literature relating to the subject of public transportation in this country exists very largely in the form of official reports and documents, in pamphlets, and in articles which have appeared from time to time in the periodicals. The number of comprehensive works is small, and anyone who desires to study the question must seek his information from literally hundreds of sources, many of which, unfortunately, are not to be found even in the largest general libraries.

For this reason it has been thought important to assign to the library of the Commission the work of assembling here at Washington for permanent preservation, so far as it can be obtained, this great mass of fragmentary and more or less elusive literature, in order that it may be made accessible to those interested in the subject and that thus may be secured a permanent record of the discussions of theories and experiences connected with transportation matters in this and other countries. It is realized that this is no inconsiderable task, for the acquisition of anything approaching a satisfactory collection of the kind requires much time and patient research.

The first systematic attempt of the Commission to establish a transportation library was made in 1894 and grew out of the necessity for

taking care of the books, pamphlets, and documents acquired in the performance of its duties. In 1898 more comprehensive plans in this regard were adopted and the scope of the effort somewhat enlarged. Since that time accessions to the library have largely increased until at present the collection comprises, in round numbers, 5,500 volumes and 7,200 pamphlets. The additions during the last year aggregate nearly 500 volumes and approximately 1,000 pamphlets. This collection embraces the official reports and documents of the several State railroad commissions, as well as Congressional and legislative documents bearing upon railroad and transportation matters. It also includes general and special treatises on the various phases of railroad affairs in this and other countries, foreign official reports and documents, reports of railroad companies, proceedings of the railway technical and other organizations, files of railway periodicals, American and foreign, proceedings and papers of commercial bodies dealing with internal commerce and transportation, and a variety of books and pamphlets relating in one way or another to railroad operations in earlier as well as in more recent years. All of this material is being properly arranged and indexed by subjects so as to be available for immediate and practical use.

This collection is steadily enlarged by the purchase from time to time of publications deemed desirable, by donations from various sources, and by exchange with other libraries of such duplicates of books and pamphlets as have been accumulated. The value of this library is demonstrated by its constant aid to the Commission and by the increasing use made of it by students of transportation questions. A wider knowledge of its existence is designed by this statement to the end that its usefulness may be still further extended. While much remains to be done to perfect the work that has been undertaken, the present collection is believed to be one of the most complete in the United States and second to none in its availability for convenient consultation.

The outlay for this purpose has been kept within modest limits, the average annual expenditure for books and other literary material being less than \$600.

NATIONAL CONVENTION OF RAILROAD COMMISSIONERS.

The twelfth annual convention of railroad commissioners was held at Milwaukee, Wis., on May 28 and 29, 1900. Representatives from 19 States and from this Commission were in attendance. The Association of American Railway Accounting Officers and the Street Railway Accounting Association of America were also represented. Addresses were made by the chairman of the convention and by Mr. A. C. Bird, third vice-president of the Chicago, Milwaukee & St. Paul Railway Company.

Committee reports were presented on the following topics: Classification of construction expenses of steam and electric railways; delays attendant upon enforcing orders of railroad commissions; legislation; powers and duties of railroad commissions; safety appliances; statistics of railroads; uniform classification, and valuation of railroad properties. After discussing the report of the committee on legislation the convention adopted the following resolution:

Resolved, That we recommend that the Federal Congress do, by appropriate legislation, confer upon the Interstate Commerce Commission the power to prescribe reasonable maximum rates for the transportation of freights and passengers by persons and corporations engaged in interstate commerce, and, as well, authority to make such rules and regulations as may be necessary to carry such power to make rates into execution.

The convention also adopted the report of the committee on delays attendant upon enforcing orders, including a resolution urging the passage by Congress of the act giving precedence in the Federal courts of cases involving the orders of railroad commissions in respect to freight or passenger rates.

The report of the committee on safety appliances was adopted. This report contained a recommendation that, in view of the fact that the greatest number of casualties reported on railroads comes from the brakemen falling off the cars, a law be enacted compelling the railroads to place a side rail upon all cars.

The committee on uniform classification again recommended that Congress take suitable action to bring about the uniform classification of interstate freight. The report was unanimously adopted by the convention.

The convention recommended to the respective legislatures of the various States the enactment of appropriate legislation for the purpose of securing detailed verified reports of cost of construction of new lines of railroad within such States, such reports to be filed with the respective State railroad commissions before permission shall be granted to the companies to operate such lines as common carriers.

The next convention will be held in San Francisco, Cal., on June 4, 1901.

This summary of the work of the Commission during the current year and of related matters deemed needful to a proper report is respectfully submitted for the consideration of the Congress.

MARTIN A. KNAPP.

JUDSON C. CLEMENTS.

JAMES D. YEOMANS.

CHARLES A. PROUTY.

JOSEPH W. FIFER.

Commissioners.

APPENDIX A.

NAMES AND COMPENSATION OF ALL EMPLOYEES, TOGETHER WITH A
STATEMENT OF APPROPRIATION AND EXPENDITURES.

1900.

APPROPRIATION, STATEMENT OF EXPENDITURES, AND PERSONS EMPLOYED BY THE COMMISSION.

STATEMENT OF APPROPRIATION AND AGGREGATE EXPENDITURES FOR THE INTER- STATE COMMERCE COMMISSION FOR THE FISCAL YEAR ENDING JUNE 30, 1900.

Sundry civil act, March 3, 1899.—For salaries of Commissioners, as provided by the act to regulate commerce	\$37,500.00	
For salary of secretary, as provided by the act to regulate commerce.....	3,500.00	\$41,000.00
For all other necessary expenditures to enable the Commission to give effect to and execute the provisions of said act to regulate commerce		209,000.00
		<u>250,000.00</u>
Amount paid as salaries to Commissioners and secretary (Commissioner William J. Calhoun having resigned September 30, 1899, and Commissioner Joseph W. Fifer having been appointed November 13, 1899).....	40,103.26	
Amount expended for all other purposes.....	203,520.93	243,624.19
		<u>6,375.81</u>
Unexpended balance, June 30, 1900.....		
MEMO.—The unexpended balance given comprises the amount of appropriation for salaries of Commissioners unexpended (due to vacancy above).....		896.74
And amount of appropriation for all other purposes unexpended.....		5,479.07
		<u>6,375.81</u>

DETAILED STATEMENT OF EXPENDITURES OF THE INTERSTATE COMMERCE COMMISSION FOR FISCAL YEAR ENDING JUNE 30, 1900.

Salaries of Commissioners and secretary.....	\$40,103.26
Employees:	
One assistant secretary, 11½ months, at \$250 per month; ½ month, at \$229.16⅔ per month.....	\$2,989.58
One solicitor, 11½ months, at \$250 per month; ½ month, at \$229.16⅔ per month.....	2,989.58
One statistician, 12 months, at \$208.33⅓ per month	2,500.00
One auditor, 12 months, at \$208.33⅓ per month	2,500.00
One special agent, 12 months, at \$208.33⅓ per month	2,500.00
Two law clerks, 12 months, at \$166.66⅔ per month.....	4,000.00

Employees—Continued.

One assistant statistician, $11\frac{1}{2}$ months, at \$166.66 $\frac{2}{3}$ per month; $\frac{1}{2}$ month, at \$150 per month.....	\$1,991.67
One assistant auditor, $11\frac{1}{2}$ months, at \$166.66 $\frac{2}{3}$ per month; $\frac{1}{2}$ month, at \$150 per month.....	1,991.67
One clerk, 12 months, at \$133.33 $\frac{1}{3}$ per month.....	1,600.00
One clerk, $11\frac{1}{2}$ months, at \$133.33 $\frac{1}{3}$ per month; $\frac{1}{2}$ month, at \$125 per month.....	1,595.84
Seven clerks, 12 months, at \$125 per month.....	10,500.00
One clerk, $11\frac{1}{2}$ months, at \$125 per month.....	1,437.50
One clerk, 2 months, at \$125 per month.....	250.00
One clerk, $11\frac{1}{2}$ months, at \$125 per month; $\frac{1}{2}$ month, at \$120.83 $\frac{1}{3}$ per month.....	1,497.91
Two clerks, $11\frac{1}{2}$ months, at \$125 per month; $\frac{1}{2}$ month, at \$116.66 $\frac{2}{3}$ per month.....	2,991.66
One clerk, 11 months, 2 days, at \$125 per month; $\frac{1}{2}$ month, at \$166.66 $\frac{2}{3}$ per month.....	1,441.66
Two clerks, $11\frac{1}{2}$ months, at \$125 per month; $\frac{1}{2}$ month, at \$112.50 per month.....	2,987.50
One clerk, $11\frac{1}{2}$ months, at \$116.66 $\frac{2}{3}$ per month; $\frac{1}{2}$ month, at \$112.50 per month.....	1,397.92
One clerk, $11\frac{1}{2}$ months, at \$116.66 $\frac{2}{3}$ per month; $\frac{1}{2}$ month, at \$108.33 $\frac{1}{3}$ per month.....	1,395.83
Four clerks, $11\frac{1}{2}$ months, at \$116.66 $\frac{2}{3}$ per month; $\frac{1}{2}$ month, at \$105 per month.....	5,576.68
One clerk, $\frac{1}{2}$ month, at \$116.66 $\frac{2}{3}$ per month; $\frac{1}{2}$ month, at \$105 per month.....	110.83
Nineteen clerks, $11\frac{1}{2}$ months, at \$108.33 $\frac{1}{3}$ per month; $\frac{1}{2}$ month, at \$105 per month.....	24,668.46
One clerk, 9 $\frac{1}{2}$ months, at \$108.33 $\frac{1}{3}$ per month; $\frac{1}{2}$ month, at \$105 per month.....	1,081.67
One clerk, 4 months, 8 days, at \$108.33 $\frac{1}{3}$ per month; $\frac{1}{2}$ month, at \$105 per month.....	514.72
Three clerks, $11\frac{1}{2}$ months, at \$108.33 $\frac{1}{3}$ per month; $\frac{1}{2}$ month, at \$100 per month.....	3,887.52
One clerk, 11 months, at \$108.33 $\frac{1}{3}$ per month; 1 month, at \$100 per month.....	1,291.67
Two clerks, 12 months, at \$105 per month.....	2,520.00
Seven clerks, 12 months, at \$100 per month.....	8,400.00
One clerk, 9 months, at \$100 per month.....	900.00
One clerk, 7 $\frac{1}{2}$ months, at \$100 per month.....	750.00
Three clerks, $11\frac{1}{2}$ months, at \$100 per month; $\frac{1}{2}$ month, at \$95.83 $\frac{1}{3}$ per month.....	3,593.73
Three clerks, $11\frac{1}{2}$ months, at \$100 per month; $\frac{1}{2}$ month, at \$91.66 $\frac{2}{3}$ per month.....	3,587.49
One clerk, $11\frac{1}{2}$ months, at \$100 per month; $\frac{1}{2}$ month, at \$88.33 $\frac{1}{3}$ per month.....	1,194.16
Three clerks, $11\frac{1}{2}$ months, at \$100 per month; $\frac{1}{2}$ month, at \$87.50 per month.....	3,581.25
One clerk, $11\frac{1}{2}$ months, at \$100 per month; $\frac{1}{2}$ month, at \$80 per month.....	1,190.00
Two clerks, 12 months, at \$91.66 $\frac{2}{3}$ per month.....	2,200.00
Twelve clerks, $11\frac{1}{2}$ months, at \$91.66 $\frac{2}{3}$ per month; $\frac{1}{2}$ month, at \$87.50 per month.....	13,175.04

Employees—Continued.

Two clerks, 11 months, at \$91.66 $\frac{2}{3}$ per month; 1 month, at \$87.50 per month.....	\$2, 191. 68
One clerk, 10 $\frac{1}{2}$ months, at \$91.66 $\frac{2}{3}$ per month; $\frac{1}{2}$ month, at \$87.50 per month.....	1, 006. 25
One clerk, 7 $\frac{1}{2}$ months 2 days, at \$91.66 $\frac{2}{3}$ per month; $\frac{1}{2}$ month, at \$87.50 per month.....	737. 08
Two clerks, 12 months, at \$87.50 per month.....	2, 100. 00
One clerk, 11 $\frac{1}{2}$ months 13 $\frac{1}{2}$ days, at \$87.50 per month.....	1, 041. 35
One clerk, 11 $\frac{1}{2}$ months 5 days, at \$87.50 per month.....	1, 020. 83
One clerk, 11 $\frac{1}{2}$ months, at \$87.50 per month.....	1, 006. 25
One clerk, 6 months 14 days, at \$87.50 per month.....	565. 84
One clerk, 2 $\frac{1}{2}$ months, at \$83.33 $\frac{1}{3}$ per month.....	208. 34
Five clerks, 11 $\frac{1}{2}$ months, at \$83.33 $\frac{1}{3}$ per month; $\frac{1}{2}$ month, at \$80 per month.....	4, 991. 70
One clerk, 10 $\frac{1}{2}$ months 11 $\frac{1}{2}$ days, at \$83.33 $\frac{1}{3}$ per month; $\frac{1}{2}$ month, at \$80 per month.....	945. 92
Two clerks, 11 $\frac{1}{2}$ months, at \$83.33 $\frac{1}{3}$ per month; $\frac{1}{2}$ month, at \$75 per month.....	1, 991. 68
One clerk, 9 months, at \$83.33 $\frac{1}{3}$ per month; $\frac{1}{2}$ month, at \$75 per month.....	787. 50
One clerk, 12 months, at \$75 per month.....	900. 00
One clerk, 11 $\frac{1}{2}$ months, at \$75 per month; $\frac{1}{2}$ month, at \$70 per month.....	897. 50
One clerk, 11 $\frac{1}{2}$ months, at \$75 per month; $\frac{1}{2}$ month, at \$65 per month.....	895. 00
One clerk, 2 months 20 days, at \$70 per month.....	185. 04
One clerk, 11 $\frac{1}{2}$ months, at \$70 per month; $\frac{1}{2}$ month, at \$65 per month.....	837. 50
One messenger, 12 months, at \$60 per month.....	720. 00
One laborer, 6 months and 11 days, at \$60 per month.....	381. 29
One laborer, 5 $\frac{1}{2}$ months, at \$60 per month.....	330. 00
One laborer, 12 months, at \$40 per month.....	480. 00
Four laborers, 12 months, at \$35 per month.....	1, 680. 00
One laborer, 132 days, at \$1.50 per day.....	198. 00
One laborer, 124 days, at \$1.50 per day.....	186. 00
One laborer, 17 days, at \$1 per day.....	17. 00
One special employee, 9 months, at \$125 per month.....	1, 125. 00

Stenography and typewriting:

2 days, at \$10 per day.....	20. 00
3 days, at \$6 per day.....	18. 00
2 days, at \$5 per day.....	10. 00
18 hours, at \$1 per hour.....	18. 00
451 hours, at 30 cents per hour.....	135. 30
337 pages, at 50 cents per page.....	168. 50
416 folios, at 25 cents per folio.....	104. 00
1,995 folios, at 15 cents per folio.....	299. 25
1,336 folios, at 10 cents per folio.....	133. 60
735 folios, at 8 $\frac{1}{4}$ cents per folio.....	61. 25
2,375 folios, at 5 cents per folio.....	118. 65

—————\$155, 297. 84

Traveling expenses of the Commission from Washington to Baltimore, Philadelphia, New York, Boston, Buffalo, Pittsburg, Chicago, Cleveland, St. Louis, Cincinnati, Detroit, St. Paul, Milwaukee, Kansas City, Denver, Omaha, Louisville, Danville, New Orleans at divers times, and to Richmond, Chattanooga, Atlanta, Nashville, Macon, Savannah, Charleston, Staunton, Lynchburg, Charlotte, Wilmington, Jacksonville, Palatka, Montgomery, Mobile, Houston, Galveston, San Antonio, Austin, Waco, Dallas, Fort Worth, Santa Fe, Ardmore, Cleburne, Atchison, Topeka, Salina, Marietta, Pawnee, Abilene, Ellsworth, Phoenix, Sioux City, Salt Lake, Seattle, Portland, San Bernardino, Los Angeles, San Francisco, Columbus, Evansville, Cedar Rapids, Lafayette, Ann Arbor, Wheeling, Parkersburg, Cumberland, Minneapolis, Grand Rapids, Council Bluffs, Des Moines, Peoria, Springfield, Fort Wayne, Lima, Mansfield, West Superior, Altoona, Rochester, St. Albans, Syracuse, Ogdensburg, Burlington, Portland, Bangor, Lewiston, Portsmouth, Concord, Fall River, Providence, Worcester, Hartford, New Haven, and Albany:

Railroad fares and accommodations while traveling, transportation of baggage, and omnibus fares	\$7, 535. 33
Hotel bills and meals en route.....	4, 014. 60
Telegrams, stationery, and extra messenger service, extra clerks, and stenographers	50. 21
	<u>\$11, 600. 14</u>
Rent of offices, fifth, sixth, seventh, and eighth floors, three rooms on fourth, one room on third, one room on first floors, and cellar (this charge includes heating, watchman, elevator, and water service).....	13, 124. 92
Desks, chairs, tables, bookcases, and filing cases.....	3, 694. 63
Printing reports, decisions, circulars, order blanks, and stationery.....	12, 373. 15
Railway and law books	930. 78
Investigations and prosecutions of violations of law.....	975. 00
Advertising.....	384. 31
Telegrams	343. 61
Janitor, ice, carrying mail, stamps, expressage, and incidental expenses	4, 796. 55
Total amount of expenditures from July 1, 1899, to June 30, 1900. . .	<u>243, 624. 19</u>

CLERICAL FORCE OF THE COMMISSION FOR THE FISCAL YEAR ENDING JUNE 30, 1900.

Name.	Office.	Whence appointed.	Time employed.	Per month.
Martin S. Decker	Assistant secretary ...	New York	11½ months	\$250. 00
Do	do	do	½ month	229. 16½
Lewellyn A. Shaver....	Solicitor	Alabama	11½ months	250. 00
Do	do	do	½ month	229. 16½
Henry C. Adams.....	Statistician	Michigan	1 year	208. 33½
Jesse M. Smith.....	Auditor.....	Alabama	do	208. 33½
John T. Marchand....	Special agent.....	Pennsylvania	do	208. 33½
Geo. A. C. Christianity..	Law clerk	Colorado	do	166. 66½
Henry Talbott	do	Illinois	do	166. 66½
Walter E. Burleigh....	Assistant statistician .	New Hampshire.....	11½ months	166. 66½
Do	do	do	½ month	150. 00
Geo. T. Roberts	Assistant auditor	Vermont.....	11½ months	166. 66½
Do	Clerk	do	½ month	150. 00

CLERICAL FORCE OF THE COMMISSION FOR THE FISCAL YEAR ENDING JUNE 30,
1900—Continued.

Name.	Office.	Whence appointed.	Time employed.	Per month.
Edward L. Pugh.....	Clerk.....	Alabama.....	1 year.....	\$133.33½
William H. Connolly.....	do.....	North Dakota.....	11½ months.....	133.33½
Do.....	do.....	do.....	½ month.....	125.00
Daniel M. Wood.....	do.....	New York.....	1 year.....	125.00
William H. Denlinger.....	do.....	Illinois.....	do.....	125.00
Robert G. Batten.....	do.....	Georgia.....	do.....	125.00
Jno. J. McAuliffe.....	do.....	District of Columbia.....	do.....	125.00
Bloom D. Chapman.....	do.....	New York.....	do.....	125.00
Samuel W. Briggs.....	do.....	Iowa.....	do.....	125.00
Raymond Loran.....	do.....	do.....	do.....	125.00
J. Howard Fishback.....	do.....	District of Columbia.....	11½ months.....	125.00
Frank Lyon.....	do.....	Virginia.....	2 months.....	125.00
Robert F. McMillan.....	do.....	Indiana.....	11½ months.....	125.00
Do.....	do.....	do.....	½ month.....	120.83½
H. S. Milstead.....	do.....	Virginia.....	11½ months.....	125.00
Do.....	do.....	do.....	½ month.....	116.66⅔
Livingston Vann.....	do.....	Florida.....	11½ months.....	125.00
Do.....	do.....	do.....	½ month.....	116.66⅔
John B. Lybrook.....	do.....	Virginia.....	11 months 2 days.....	125.00
Do.....	do.....	do.....	½ month.....	116.66⅔
Jack F. Moss.....	do.....	Mississippi.....	11½ months.....	125.00
Do.....	do.....	do.....	½ month.....	112.50
Edward M. Graney.....	do.....	New York.....	11½ months.....	125.00
Do.....	do.....	do.....	½ month.....	112.50
J. Fletcher Johnston.....	do.....	Kentucky.....	11½ months.....	116.66⅔
Do.....	do.....	do.....	½ month.....	112.50
William A. King.....	do.....	New York.....	11½ months.....	116.66⅔
Do.....	do.....	do.....	½ month.....	108.33½
Harry G. Morison.....	do.....	do.....	11½ months.....	116.66⅔
Do.....	do.....	do.....	½ month.....	105.00
Thomas Jackson.....	do.....	do.....	11½ months.....	116.66⅔
Do.....	do.....	do.....	½ month.....	105.00
Nathan C. Munroe.....	do.....	Georgia.....	11½ months.....	116.66⅔
Do.....	do.....	do.....	½ month.....	105.00
Harry C. Robinson.....	do.....	Vermont.....	11½ months.....	116.66⅔
Do.....	do.....	do.....	½ month.....	105.00
Albert E. Furniss.....	do.....	Connecticut.....	do.....	116.66⅔
Do.....	do.....	do.....	do.....	105.00
Willoughby S. Chesley.....	do.....	Maryland.....	11½ months.....	108.33½
Do.....	do.....	do.....	½ month.....	105.00
Robert E. Lewis.....	do.....	District of Columbia.....	11½ months.....	108.33½
Do.....	do.....	do.....	½ month.....	105.00
Duncan L. Richmond.....	do.....	do.....	11½ months.....	108.33½
Do.....	do.....	do.....	½ month.....	105.00
Edward B. Blizzard.....	do.....	West Virginia.....	11½ months.....	108.33½
Do.....	do.....	do.....	½ month.....	105.00
Geo. M. Crosland.....	do.....	South Carolina.....	11½ months.....	108.33½
Do.....	do.....	do.....	½ month.....	105.00
James S. Fitzhugh.....	do.....	Texas.....	11½ months.....	108.33½
Do.....	do.....	do.....	½ month.....	105.00
John A. Shearer.....	do.....	Pennsylvania.....	11½ months.....	108.33½
Do.....	do.....	do.....	½ month.....	105.00
Silas C. Robb.....	do.....	Kansas.....	11½ months.....	108.33½
Do.....	do.....	do.....	½ month.....	105.00

CLERICAL FORCE OF THE COMMISSION FOR THE FISCAL YEAR ENDING JUNE 30,
1900—Continued.

Name.	Office.	Whence appointed.	Time employed.	Per month.
John H. Tilton.....	Clerk	New Jersey.....	11½ months	\$108.33½
Do	do	do	½ month	105.00
John F. Dwyer	do	Massachusetts.....	11½ months	108.33½
Do	do	do	½ month	105.00
Louis W. Perkins	do	Louisiana	11½ months	108.33½
Do	do	do	½ month	105.00
Alfred C. Smith.....	do	New York	11½ months	108.33½
Do	do	do	½ month	105.00
Henry E. Kondrup	do	District of Columbia..	11½ months	108.33½
Do	do	do	½ month	105.00
Michael Hays Perry	do	New Jersey.....	11½ months	108.33½
Do	do	do	½ month	105.00
George O. Boal.....	do	Pennsylvania	11½ months	108.33½
Do	do	do	½ month	105.00
J. J. Lewis	do	Colorado	11½ months	108.33½
Do	do	do	½ month	105.00
Hart P. Grigsby.....	do	Kentucky	11½ months	108.33½
Do	do	do	½ month	105.00
John S. Walker	do	Iowa	11½ months	108.33½
Do	do	do	½ month	105.00
Archibald H. Davis.....	do	North Carolina.....	11½ months	108.33½
Do	do	do	½ month	105.00
Joseph G. Blount	do	Georgia	9½ months	108.33½
Do	do	do	½ month	105.00
Charles H. Young	do	Missouri.....	4 months, 8 days ..	108.33½
Do	do	do	½ month	105.00
Ervin C. Bowen	do	District of Columbia..	11½ months	108.33½
Do	do	do	½ month	100.00
R. Wirt Washington.....	do	Virginia	11½ months	108.33½
Do	do	do	½ month	100.00
Gove S. Wilson.....	do	Delaware	11½ months	108.33½
Do	do	do	½ month	100.00
Samuel D. Sterne.....	do	Iowa	11 months	108.33½
Do	do	do	1 month	100.00
Frederick P. Russell.....	do	Massachusetts.....	1 year	105.00
R. F. Kellam	do	Arkansas	do	105.00
John H. Anderson.....	do	Indiana	do	100.00
James L. Murphy	do	Louisiana	do	100.00
John D. Nixon	do	Oklahoma	do	100.00
Zeb Vance Harris	do	North Carolina	do	100.00
Harry A. Bigley	do	District of Columbia..	do	100.00
Walter W. Scott	do	Virginia	do	100.00
George I. Thomas	do	Georgia	do	100.00
William W. Chance	do	Illinois	9 months	100.00
Edward K. De Puy.....	do	South Dakota	7½ months	100.00
John H. Clipper.....	do	Maryland	11½ months	100.00
Do	do	do	½ month	95.83½
James C. Jemison	do	Delaware	11½ months	100.00
Do	do	do	½ month	95.83½
Charles Bingham	do	Pennsylvania	11½ months	100.00
Do	do	do	½ month	95.83½
Wm. R. Mack	do	Michigan	11½ months	100.00
Do	do	do	½ month	91.66½
Eugene L. Gaddess.....	do	Virginia	11½ months	100.00
Do	do	do	½ month	91.66½

CLERICAL FORCE OF THE COMMISSION FOR THE FISCAL YEAR ENDING JUNE 30,
1900—Continued.

Name.	Office.	Whence appointed.	Time employed.	Per month.
William R. England	Clerk	Virginia	11½ months	\$100.00
Do	do	do	½ month	91.66½
Silas H. Smith	do	Kentucky	11½ months	100.00
Do	do	do	½ month	88.33½
Charles F. Gerry	do	Maryland	11½ months	100.00
Do	do	do	½ month	87.50
John C. C. Patterson	do	do	11½ months	100.00
Do	do	do	½ month	87.50
William F. Craig	do	Pennsylvania	11½ months	100.00
Do	do	do	½ month	87.50
Montgomery Cumming	do	Georgia	11½ months	100.00
Do	do	do	½ month	80.00
Alfred Holmead	do	District of Columbia	1 year	91.66½
Calvin A. Mathes	do	Tennessee	do	91.66½
Carlton R. Willett	do	Texas	11½ months	91.66½
Do	do	do	½ month	87.50
Edward D. Anderson	do	Missouri	11½ months	91.66½
Do	do	do	½ month	87.50
Fontaine L. Carswell	do	Georgia	11½ months	91.66½
Do	do	do	½ month	87.50
Jesse D. Newton	do	Nebraska	11½ months	91.66½
Do	do	do	½ month	87.50
William S. Hardesty	do	Indiana	11½ months	91.66½
Do	do	do	½ month	87.50
Dixon H. Bynum	do	do	11½ months	91.66½
Do	do	do	½ month	87.50
Henry A. Dwight	do	Iowa	11½ months	91.66½
Do	do	do	½ month	87.50
James R. Pipes	do	West Virginia	11½ months	91.66½
Do	do	do	½ month	87.50
George Q. Houlehan	do	Maine	11½ months	91.66½
Do	do	do	½ month	87.50
Charles S. Rockwood	do	Massachusetts	11½ months	91.66½
Do	do	do	½ month	87.50
Matthew T. Pollock	do	Virginia	11½ months	91.66½
Do	do	do	½ month	87.50
Garrett J. Stack	do	Missouri	11½ months	91.66½
Do	do	do	½ month	87.50
Arthur F. Rudolph	do	South Dakota	11 months	91.66½
Do	do	do	1 month	87.50
William C. Swain	do	District of Columbia	11 months	91.66½
Do	do	do	1 month	87.50
Richmond F. Bingham	do	New Hampshire	10½ months	91.66½
Do	do	do	½ month	87.50
John Q. Eaton	do	do	7½ months, 2 days	91.66½
Do	do	do	½ month	87.50
John S. Copeland	do	Arkansas	1 year	87.50
Andrew Denham	do	Florida	do	87.50
Bennet C. Taliaferro	do	Tennessee	11½ months, 13½ days	87.50
William C. Borland	do	Idaho	11½ months, 5 days	87.50
Pearson F. Marsh	do	Ohio	11½ months	87.50
Edward G. Ward, jr	do	New York	6 months, 14 days	87.50
Harry A. Bruck	do	Maryland	2½ months	\$3.33½

CLERICAL FORCE OF THE COMMISSION FOR THE FISCAL YEAR ENDING JUNE 30,
1900—Continued.

Name.	Office.	Whence appointed.	Time employed.	Per month.
J. D. McCafferty.....	Clerk	Pennsylvania	11½ months	\$83.33½
Do	do	do	½ month	80.00
Laurence J. McGee	do	Maryland	11½ months	83.33½
Do	do	do	½ month	80.00
John G. Reeves	do	District of Columbia..	11½ months	83.33½
Do	do	do	½ month	80.00
William A. Cox	do	Tennessee	11½ months	83.33½
Do	do	do	½ month	80.00
Philip A. Robinson	do	New Hampshire.....	11½ months	83.33½
Do	do	do	½ month	80.00
Joseph Reardon.....	do	Maine	10½ months, 11½ days	83.33½
Do	do	do	½ month	80.00
T. Wingfield Bullock..	do	Kentucky	11½ months	83.33½
Do	do	do	½ month	75.00
A. M. Hartsfield	do	Georgia	11½ months	83.33½
Do	do	do	½ month	75.00
C. W. Kendall	do	Colorado	9 months	83.33½
Do	do	do	½ month	75.00
James H. Lewis	do	District of Columbia..	1 year	75.00
Henry J. Conyngton	do	Texas	11½ months	75.00
Do	do	do	½ month	70.00
Frank C. Stratton	do	Kansas	11½ months	75.00
Do	do	do	½ month	65.00
Earl J. Decker ¹	do	Nebraska	2 months, 20 days ..	70.00
Abram P. Worthington..	do	Ohio	11½ months	70.00
Do	do	do	½ month	65. 0
M. D. L. Harden	Messenger	Kansas	1 year	60.00
S. D. Boak	Laborer	West Virginia	6 months, 11 days..	66.00
Albert A. Bartlett	do	Ohio	5½ months	60.00
Henry Cissel	do	District of Columbia .	1 year	40.00
Thomas H. Robinson..	do	do	do	35.00
James A. Dove	do	Maryland	do	35.00
Eugene A. Burton	do	District of Columbia..	do	35.00
Louis F. Clipper	do	Maryland	do	35.00
S. D. Baxter	do	District of Columbia..	132 days	21.50
John W. Eacritt	do	do	124 days	21.50
Crawford E. Alexander..	do	do	17 days	21.00
J. W. Watson	Special employee.....	New York	9 months	125.00

¹ Deceased.² Per day.

LIST OF PERSONS EMPLOYED BY THE INTERSTATE COMMERCE COMMISSION DECEMBER 1, 1900.

Name.	Office.	Whence appointed.	Salary per month.
Martin S. Decker.....	Assistant secretary	New York	\$250.00
Lewellyn A. Shaver.....	Solicitor	Alabama	250.00
Henry C. Adams	Statistician	Michigan.....	208.33½
Jesse M. Smith	Auditor	Alabama	208.33½
John T. Marehand	Special agent.....	Pennsylvania	208.33½
George A. C. Christianity.....	Law clerk	Colorado	166.66½
Henry Talbott.....	do	Illinois	166.66½
Walter E. Burleigh.....	Assistant statistician	New Hampshire.....	166.66½
George T. Roberts.....	Assistant auditor	Vermont	166.66½
William H. Connolly.....	Clerk	North Dakota	141.66½
Edward L. Pugh	do	Alabama	133.33½
Robert F. McMillan	do	Indiana	133.33½
Daniel M. Wood.....	do	New York	125.00
J. Howard Fishback	do	District of Columbia.....	125.00
William H. Denlinger.....	do	Illinois	125.00
H. S. Milstead.....	do	Virginia	125.00
Robert G. Batten.....	do	Georgia.....	125.00
Jack F. Moss	do	Mississippi.....	125.00
John B. Lybrook	do	Virginia	125.00
John J. McAuliffe	do	District of Columbia.....	125.00
Bloom D. Chapman	do	New York	125.00
Edward M. Graney.....	do	do	125.00
Livingston Vann.....	do	Florida	125.00
Samuel W. Briggs	do	Iowa	125.00
Raymond Loran.....	do	do	125.00
Harry C. Robinson	do	Vermont.....	125.00
Thomas Jackson	do	New York	125.00
Nathan C. Munroe	do	Georgia.....	116.66½
William A. King	do	New York	116.66½
J. Fletcher Johnston	do	Kentucky	116.66½
Duncan L. Richmond	do	District of Columbia.....	116.66½
Ervin C. Bowen	do	do	108.33½
Willoughby S. Chesley	do	Maryland	108.33½
Robert E. Lewis.....	do	District of Columbia.....	108.33½
Edward B. Blizzard.....	do	West Virginia	108.33½
George M. Crosland	do	South Carolina	108.33½
James S. Fitzhugh	do	Texas.....	108.33½
John A. Shearer.....	do	Pennsylvania.....	108.33½
Silas C. Robb.....	do	Kansas	108.33½
John H. Tilton	do	New Jersey	108.33½
John F. Dwyer	do	Massachusetts	108.33½
Louis W. Perkins.....	do	Louisiana.....	108.33½
Alfred C. Smith	do	New York	108.33½
Henry E. Kondrup.....	do	District of Columbia.....	108.33½
Michael Hays Perry.....	do	New Jersey.....	108.33½
George O. Boal	do	Pennsylvania.....	108.33½
J. J. Lewis.....	do	Colorado.....	108.33½
John S. Walker.....	do	Iowa	108.33½
Joseph G. Blount.....	do	Georgia.....	108.33½
Archibald H. Davis.....	do	North Carolina.....	108.33½
Charles H. Young	do	Missouri	108.33½
R. Wirt Washington.....	do	Virginia	108.33½
Hart P. Grigsby	do	Kentucky	108.33½
Samuel D. Sterne.....	do	Iowa.....	108.33½

100 REPORT OF THE INTERSTATE COMMERCE COMMISSION.

LIST OF PERSONS EMPLOYED BY THE INTERSTATE COMMERCE COMMISSION DECEMBER 1, 1900—Continued.

Name.	Office.	Whence appointed.	Salary per month.
Gove S. Wilson.....	Clerk.....	Delaware.....	\$108.33½
Eugene L. Gaddess.....	do.....	Virginia.....	108.33½
James L. Murphy.....	do.....	Louisiana.....	108.33½
Zeb Vance Harris.....	do.....	North Carolina.....	108.33½
James C. Jemison.....	do.....	Delaware.....	108.33½
Charles Bingham.....	do.....	Pennsylvania.....	108.33½
William R. England.....	do.....	Virginia.....	108.33½
George I. Thomas.....	do.....	Georgia.....	108.33½
Frederick P. Russell.....	do.....	Massachusetts.....	105.00
R. F. Kellam.....	do.....	Arkansas.....	105.00
William R. Mack.....	do.....	Michigan.....	100.00
John H. Clipper.....	do.....	Maryland.....	100.00
Charles F. Gerry.....	do.....	do.....	100.00
John H. Anderson.....	do.....	Indiana.....	100.00
John C. C. Patterson.....	do.....	Maryland.....	100.00
William W. Chance.....	do.....	Illinois.....	100.00
John D. Nixon.....	do.....	Oklahoma.....	100.00
Harry A. Bigley.....	do.....	District of Columbia.....	100.00
Walter W. Scott.....	do.....	Virginia.....	100.00
William F. Craig.....	do.....	Pennsylvania.....	100.00
George Q. Houlehan.....	do.....	Maine.....	100.00
Silas H. Smith.....	do.....	Kentucky.....	100.00
Montgomery Cumming.....	do.....	Georgia.....	100.00
Edward K. De Puy.....	do.....	South Dakota.....	100.00
Carlton R. Willett.....	do.....	Texas.....	100.00
Edward D. Anderson.....	do.....	Missouri.....	100.00
Fontaine L. Carswell.....	do.....	Georgia.....	100.00
Jesse D. Newton.....	do.....	Nebraska.....	100.00
Henry A. Dwight.....	do.....	Iowa.....	100.00
William C. Swain.....	do.....	District of Columbia.....	100.00
Charles S. Rockwood.....	do.....	Massachusetts.....	100.00
Garrett J. Stack.....	do.....	Missouri.....	100.00
Richmond F. Bingham.....	do.....	New Hampshire.....	91.66½
Arthur F. Rudolph.....	do.....	South Dakota.....	91.66½
Alfred Holmead.....	do.....	District of Columbia.....	91.66½
William S. Hardesty.....	do.....	Indiana.....	91.66½
Dixon H. Bynum.....	do.....	do.....	91.66½
James R. Pipes.....	do.....	West Virginia.....	91.66½
Matthew T. Pollock.....	do.....	Virginia.....	91.66½
Calvin A. Mathes.....	do.....	Tennessee.....	91.66½
John S. Copeland.....	do.....	Arkansas.....	91.66½
Pearson F. Marsh.....	do.....	Ohio.....	91.66½
Bennet C. Taliaferro.....	do.....	Tennessee.....	91.66½
William C. Borland.....	do.....	Idaho.....	91.66½
Andrew Denham.....	do.....	Florida.....	91.66½
J. D. McCafferty.....	do.....	Pennsylvania.....	91.66½
Joseph Reardon.....	do.....	Maine.....	91.66½
John G. Reeves.....	do.....	District of Columbia.....	91.66½
William A. Cox.....	do.....	Tennessee.....	91.66½
Philip A. Robinson.....	do.....	New Hampshire.....	91.66½
A. M. Hartsfield.....	do.....	Georgia.....	91.66½
T. Wingfield Bullock.....	do.....	Kentucky.....	83.33½
Laurence J. McGee.....	do.....	Maryland.....	83.33½
C. W. Kendall.....	do.....	Colorado.....	83.33½

LIST OF PERSONS EMPLOYED BY THE INTERSTATE COMMERCE COMMISSION DECEMBER 1, 1900—Continued.

Name.	Office.	Whence appointed.	Salary per month.
Harry A. Bruck.....	Clerk	Maryland	\$83.33 ¹
Frank C. Stratton.....	do	Kansas	83.33 ¹
James H. Lewis.....	do	District of Columbia.....	75.00
Henry J. Conyngton.....	do	Texas.....	75.00
Abram P. Worthington.....	do	Ohio.....	75.00
M. D. L. Harden.....	do	Kansas	70.00
Albert A. Bartlett.....	Laborer	Ohio.....	60.00
S. D. Boak	do	West Virginia	60.00
C. R. Sherwood, jr.....	Temporary typewriter.....	New York	60.00
Henry Cissel.....	Laborer	District of Columbia.....	40.00
Thomas H. Robinson.....	do	do	40.00
Eugene A. Burton.....	do	Kentucky	40.00
James A. Dove.....	do	Maryland	35.00
Louis F. Clipper.....	do	do	35.00
George W. Hess.....	Skilled laborer	Massachusetts.....	40.00
Samuel D. Baxter.....	Laborer	District of Columbia.....	¹ 1.50
John W. Eacritt.....	do	do	¹ 1.50

¹ Per day.

APPENDIX B.

POINTS DECIDED BY THE COMMISSION SINCE ITS
ORGANIZATION.

POINTS DECIDED BY THE COMMISSION SINCE ITS ORGANIZATION.

In re The Southern Pacific Railroad Company. (1 I. C. C. Rep., 6.)

1. The Commission will not make an order for relief under the fourth section of the act to regulate commerce except upon verified petition and after investigation into the facts.

In re The Petition of the Order of Railway Conductors.

In re The Petition of the Traders and Travelers' Union. (1 I. C. C. Rep., 8.)

2. The Commission will not express opinions on abstract questions, nor on questions presented by *ex parte* statements of fact, nor on questions of construction of the statute presented for its advice but without any controversy pending before it on complaint of violation of law.
3. Where the question on which advice is sought is whether carriers subject to the act may now grant any particular right or privilege which they were accustomed to grant before, the carriers should, in the first instance, determine it for themselves, and if it is then complained that what they do violates the act, the question can be brought before the Commission on complaint, and it will then have jurisdiction to decide it.

In re Indian Supplies. (1 I. C. C. Rep., 15.)

4. When under the statute the Government contracts for the delivery of the supplies needed for the Indian service, at New York and other points designated, and then advertises for bids for the transportation of the supplies from the points of delivery to the points where they are to be made use of, this transportation at the cost of the Government is "for the United States" within the meaning of section 22 of the act to regulate commerce, and is not required to be made at the regular published rates.

In re The Iowa Barbed Steel Wire Company. (1 I. C. C. Rep., 17.)

5. The Interstate Commerce Commission has not been given authority to authorize the grant by railroad companies of special privileges to individuals or corporations, or to sanction such as are not in harmony with the act to regulate commerce, or to suspend that act for the benefit of particular industries.
6. Whether railroad companies ought to grant a particular special privilege which would not be illegal, the Commission would not undertake to say on *ex parte* application.
7. A petition was presented by a manufacturing corporation, which recited in substance that railroad companies had been accustomed to permit it to procure its raw material at a distance, manufacture its goods therefrom, and then ship the goods to a market at the same aggregate rate for transportation of both raw material and manufactured goods as would be charged had there been no stoppage in transit and no manufacture; that this privilege of manufacturing in transit was valuable to the corporation and to the community in which its business was located, and wronged no one; and petitioner prayed that it might be sanctioned by the Commission. But no authority to that effect having been conferred upon the Commission, the petition was dismissed.

In re The St. Louis Millers' Association. (1 I. C. C. Rep., 20.)

8. The Commission reiterates that it has no authority to order or sanction the giving of special privileges.
9. "Milling in transit" having long been permitted by common carriers to millers at certain points, and a large quantity of "transits" being said to be out, which can be and are made use of to give millers at Minneapolis an advantage in rates over those at St. Louis, the Commission can not correct the wrong by giving or authorizing special rates to the St. Louis millers.

In re United States Commission of Fish and Fisheries. (1 I. C. C. Rep., 21.)

10. The United States Commission of Fish and Fisheries being one of the agencies of Government, and the distribution of fish and fish eggs by it being made by authority of the Government, the transportation of the fish and fish eggs so distributed falls within the exception contained in section 22 of the act to regulate commerce, and the rate is not governed by the published tariff.
11. The question of free transportation to employees and agents of the Commission and of the National Museum raised but not passed upon.

In re Export Trade of Boston. (1 I. C. C. Rep., 24.)

12. It seems not to be illegal for railroad companies connecting Boston with Western points to make the rates from such points to Boston upon grain and provisions for export as low as the rates to New York, although the rates upon like property for local consumption are higher to Boston than to New York, the distance being somewhat greater.
13. Reasons given why this may be a necessity of the situation.

In re Disabled Soldiers and Sailors. (1 I. C. C. Rep., 28.)

14. Whether since the passage of the act to regulate commerce it is competent for the carriers subject to it to grant free transportation of persons to those who are proper subjects of charity, the Commission will not undertake to say, when no controversy is pending before it which raises the question.

In re Annapolis, Washington and Baltimore R. R. Co. *et al.* (1 I. C. Rep., 315.)

15. So far as a railroad company whose line is entirely within one State issues through bills of lading over its connecting lines to points in other States, and makes through rates, it falls under the provision of the Interstate Commerce act.

The Missouri and Illinois Railroad Tie and Lumber Company v. The Cape Girardeau and Southwestern Railway Company. (1 I. C. C. Rep., 30.)

16. The fact that the owner of merchandise which is offered to a carrier for transportation from one point to another in the same State intends to have it further transported by a second carrier into another State does not make such first transportation interstate commerce, or render the carrier subject to the control of the Commission in respect to it, even though such first carrier may be informed of the ultimate destination of the merchandise.

In re Petition of the Louisville and Nashville Railroad Company. (1 I. C. C. Rep., 31.)

17. When a railroad company claims that the circumstances and conditions of long and short hauls on its line are so dissimilar as to justify its making the greater charge on the shorter haul, the Commission will not on its petition decide upon the justice of its claim, but will leave it to take the initiative in fixing rates, and will decide upon their justice and propriety when complaint is made by persons or localities who consider themselves injured. On questions of statutory construction involved in such cases the Commission holds:
18. *First.* That the prohibition in the fourth section of the act to regulate commerce against a greater charge for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance as qualified therein, is limited to cases in which the circumstances and conditions are substantially similar.
19. *Second.* That the phrase "under substantially similar circumstances and conditions" in the fourth section is used in the same sense as in the second section; and under the qualified form of the prohibition in the fourth section carriers are required to judge in the first instance with regard to the similarity or dissimilarity of the circumstances and conditions that forbid or permit a greater charge for a shorter distance.
20. *Third.* That the judgment of carriers in respect to the circumstances and conditions is not final, but is subject to the authority of the Commission and of the courts to decide whether error has been committed or whether the statute has been violated. And in case of complaint for violating the fourth section of the act the burden of proof is on the carrier to justify any departure from the general rule prescribed by the statute by showing that the circumstances and conditions are substantially dissimilar.
21. *Fourth.* That the provisions of section 1, requiring charges to be reasonable and just, and of section 2, forbidding unjust discrimination, apply when exceptional charges are made under section 4 as they do in other cases.
22. *Fifth.* That the existence of actual competition which is of controlling force, in respect to traffic important in amount, may make out the dissimilar circumstances and conditions entitling the carrier to charge less for the longer

than for the shorter haul over the same line in the same direction, the shorter being included in the longer in the following cases:

1. When the competition is with carriers by water which are not subject to the provisions of the statute.
2. When the competition is with foreign or other railroads which are not subject to the provisions of the statute.
3. In rare and peculiar cases of competition between railroads which are subject to the statute, when a strict application of the general rule of the statute would be destructive of legitimate competition.

23. *Sixth.* The Commission further decides that when a greater charge in the aggregate is made for the transportation of passengers or the like kind of property for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance, it is not sufficient justification therefor that the traffic which is subjected to such greater charge is way or local traffic and that which is given the more favorable rates is not.

24. Nor is it sufficient justification for such greater charge that the short-haul traffic is more expensive to the carrier, unless when the circumstances are such as to make it exceptionally expensive, or the long-haul traffic exceptionally inexpensive, the difference being extraordinary and susceptible of definite proof.

Nor that the lesser charge on the longer haul has for its motive the encouragement of manufactures or some other branch of industry.

Nor that it is designed to build up business or trade centers.

Nor that the lesser charge on the longer haul is merely a continuation of the favorable rates under which trade centers or industrial establishments have been built up.

The fact that long-haul traffic will only bear certain rates is no reason for carrying it for less than cost at the expense of other traffic.

The Chicago and Alton Railroad Company v. The Pennsylvania Railroad Company; The Same v. The Pennsylvania Company; The Chicago, Rock Island and Pacific Railroad Company v. The New York Central and Hudson River Railroad Company. (1 I. C. C. Rep., 86.)

25. The defendants adopted a regulation that they would not sell tickets for and over the line of a connecting road unless such connecting road would abstain from paying commissions to their agents on the sales made, and would make promise to that effect. Such a regulation is reasonable, and therefore legal.

26. A railroad company has a right to insist that its agents shall be its employees exclusively, and it is not obliged to permit any other company to make them its employees also.

27. The requirement in the act to regulate commerce that common carriers shall "afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith," will not require a railroad company to sell through tickets over the line of a road whose managers persist in offering commissions to the agents who sell such tickets.

28. The practice of paying commissions to the agents of other roads on tickets sold over the road of the company paying the same, condemned as demoralizing, and as an improper drain on corporate resources.

29. If a passage ticket over several roads is a reasonable facility of travel the privilege of paying a commission to the agent who sells it, and who would be required by duty to his employer to sell it when called for, without any commission therefor, can not be regarded as an incident to the facility, and therefore can not be insisted on.

Holbrook et al. v. St. Paul, Minneapolis and Manitoba Railroad Company. (1 I. C. C. Rep., 102.)

30. No order can be made against a railroad company on a complaint which is not supported by evidence.

31. If a railroad company avows a purpose to comply with the law it must be assumed that it will do so and is doing so until there is evidence that the purpose is not lived up to.

Fulton v. The Chicago, St. Paul, Minneapolis and Omaha Railroad Company; Harding v. the same company. (1 I. C. C. Rep., 104.)

32. Where complaint is made of rates as excessive the burden is upon complainant to make proof of the fact alleged, and if no proofs are put in by either party the complaint will be dismissed. This held in a case in which the rates were much higher than they had at one time been on the same line.

The Providence Coal Company v. The Providence and Worcester Railroad Company. (1 I. C. C. Rep., 107.)

33. An offer by a railroad company to give a discount to any consignee who within a year shall receive at any one station a specified amount of freight, which offer purports to be made to secure speedy dispatch, but it is not conditioned on speedy dispatch being made, is void, and if a discount is made to one dealer in pursuance of it, all others will be entitled to a like discount.
34. If the real consideration of the offer were to secure speedy dispatch, it should have been open to all who could accept it, regardless of quantity.
35. An offer of a special discount made professedly on one ground in the published tariff can not, when that ground fails, be supported by referring it to some other and different ground.
36. A railroad company can not support a discount based on quantity of freight received by any one shipper, on the principles which are applied among merchants, whereby they give better prices in wholesale than in retail dealings. The cases are not analogous, since the naming of the quantity of freight that shall be compared to wholesale purchases must necessarily be altogether arbitrary, and the duty of impartial service which the company owes to the public will preclude special discriminations being determined by arbitrary tests.
37. The Providence and Worcester Railroad Company has one terminus on the river in Providence, and another across the river in East Providence; the one in Providence having been first constructed, and the other later, and for the convenience of the company. From the Providence terminus to points reached from both the distance is slightly the less. The company is not at liberty to make from Providence to such common points higher charges than from East Providence, in order to force the business to the latter terminus, and would be chargeable with unjust discrimination if it should do so.
38. The fact that a railroad company for many years has paid the charge for hauling freight from wharves to its station does not bind it to continue that practice, and if not bound by contract it may stop doing so at any time.

The Traders and Travelers' Union v. The Philadelphia and Reading Railroad Company et al. (1 I. C. C. Rep., 122.)

39. The Commission has no jurisdiction to compel railroad companies to make arrangements whereby commercial travelers or others will be allowed as passengers to take an extra allowance of baggage without extra charge, in consideration of some guaranty against liability.
40. The fact that contracts to that effect are outstanding will not give the Commission authority to compel their observance, the power to do so not having been conferred upon the Commission by statute.

Burton Stock-Car Company v. Chicago, Burlington and Quincy Railroad Company et al. (1 I. C. C. Rep., 132.)

41. As the Burton Stock-Car Company does not use cars of railroad companies, or exchange cars in any manner, but rents them to the public for hire, the refusal of the defendants to pay the same mileage allowed on exchanges of cars between each other does not constitute unjust discrimination.

Ottinger v. The Southern Pacific Railroad Company. (1 I. C. C. Rep., 144.)

42. A complaint for unjust discrimination under the act to regulate commerce can not be made to embrace cases which occurred before the act was passed, even though they be similar to one which is complained of, and which arose afterwards.
43. The Commission has a certain discretion to receive and adjudge complaints made by parties who have no interest in the matter involved; but where "a railroad-ticket broker" complained that a party holding a ticket not transferable by its terms had been refused a permission of transfer which was given to another, and produced the affidavit of such party in proof of the fact, it was held that the party himself should complain, if anyone.
44. A *prima facie* case of unjust discrimination is not shown by the mere exhibition of two tickets for passage, one of which the railroad company has permitted to be transferred and the other not, when the two do not appear to be similar.

Larrison v. The Chicago and Grand Trunk Railway Company; The Michigan Central Railroad Company v. The Same. (1 I. C. C. Rep., 147.)

45. Mileage tickets authorized by section 22 of the act to regulate commerce.
46. Authorization of mileage tickets does not relieve carriers from requirements of reasonableness and impartiality as to rates charged, which are prescribed by other sections of the act.

47. Special contract limiting liability of carrier in mileage tickets to commercial travelers will not justify a lower rate than is charged the public, when same terms are not offered to all who will not accept such special contracts.
48. Must be sold impartially.

Thatcher v. The Delaware and Hudson Canal Company and others. (1 I. C. C. Rep., 152.)

49. The fact that railroad companies accept on through shipments from Chicago to Boston a certain sum as their share for the transportation of the freight from Schenectady to Boston is no ground for compelling them to accept a like sum on local shipments from Schenectady to Boston when it appears that this would be a reduction below the rates made from intermediate stations to Boston, on the same line, and apparently under similar circumstances and conditions.
50. Any order compelling such acceptance would bring the rates charged into conflict with the fourth section of the act to regulate commerce, unless the roads should reduce the rates from the intermediate stations to the level of the rates made from Schenectady. But in the absence of either allegation or proof that the rates from such intermediate stations are excessive, the Commission could not require a reduction.

The Associated Wholesale Grocers of St. Louis v. The Missouri Pacific Railway Company. (1 I. C. C. Rep., 156.)

51. Mileage, excursion, and commutation passenger tickets are each issued for a different purpose, and the price for each kind is determined on special considerations. The charge made for one kind, therefore, does not determine what it will be admissible to charge for either of the others.
52. That \$25 for a thousand-mile ticket is too much can not be inferred from the fact that excursion and commutation tickets are sold at rates which would make transportation upon them for a thousand miles less than \$25.
53. Mileage tickets when issued must be sold impartially to all who apply for them and on the same terms.

The Boston and Albany Railroad Company v. The Boston and Lowell Railroad Company et al.; The Vermont State Grange v. The Boston and Lowell Railroad Company et al. (1 I. C. C. Rep., 158.)

54. All companies forming a line for long-haul traffic are properly made defendants in petition charging violation of fourth section.
55. By the words "same line" a physical line is meant, not a mere business arrangement; and one piece of road may be part of several lines.
56. The fact that the tariff for the long-haul traffic is made by a fast-freight line does not justify a violation of the section.
57. The real and actual, not the possible, competition are the circumstances which should be considered when such greater charges are in question.
58. Under the circumstances stated, the fact that a line is long and circuitous, and is obliged to make concessions in its charges in order to share in traffic, will not make out the dissimilar circumstances and conditions indicated by the fourth section.
59. One may complain on public grounds, though having no personal interest.

Jackson v. The St. Louis, Arkansas and Texas Railway Company. (1 I. C. C. Rep., 184.)

60. Petitioner complained of a certain rate as excessive. He also complained of unjust discrimination in respect to that rate. Defendant answered that its rate was not what petitioner supposed, but was a certain charge very much less, and also denied the alleged unjust discrimination. Petitioner did not further appear in the case, and did not respond at the hearing. *Held*, That it must be assumed on these facts that he was satisfied with the answer.

Leonard v. The Union Pacific Railway Company. (1 I. C. C. Rep., 185.)

61. When issues of fact are made by the pleadings and no proofs are offered, no relief can be granted on such issues.
62. The complaint charged unjust discrimination in rates. The answer admitted the discrimination, denied that it was unjust, and assigned reasons for making it. On the case being brought to a hearing on the pleadings and submitted without evidence, it was *held* that, since it was impossible to say that there might not be facts to support the discrimination, the case must be dismissed, but without prejudice.

Keith et al. v. The Kentucky Central Railroad Company et al. (1 I. C. C. Rep., 189.)

63. A common carrier of live stock is subject to the legal duty to provide reasonable and proper facilities for receiving and discharging from its cars such live stock as is offered for transportation, free of all except the customary

transportation charges. It does not fully discharge this duty by receiving on and discharging from its cars live stock at a depot access to which must be purchased.

64. A railroad company as carrier of live stock had undertaken to give to a stock-yards company an exclusive right at one of its stations, and to require all stock at that station to be received and delivered on the platform of the chutes of that company; the company being authorized to charge lottage therefor. Complainants established by the track of the railroad company chutes of their own, through which they demanded the right of receiving and delivering the stock of themselves and their customers. The conveniences furnished by them being suitable, it was held that their demand must be complied with.
65. Where suit is pending involving to some extent the question presented by petition to the Commission, the pendency thereof will not be deemed sufficient reason for the Commission declining to make an order, when it is seen that the judgment of the court when rendered will not necessarily cover the ground of the petition; but leave will be given either party to apply for a modification of the order should a modification be necessary to make it conform to the judgment when rendered.

Allen et al. v. The Louisville, New Albany and Chicago Railroad Company. (1 I. C. C. Rep., 199.)

66. Rates named by a carrier do not violate the fourth section when it appears that on its own line the charges are greater for the longer distance and the through charges by the shorter line are only made greater by the fact that the connecting road which has the shorter line makes higher rates than the connecting road which has the longer line.
67. Cases stated showing no violation of the long and short haul clause.
68. Where the purpose of a complaint is to compel a reduction of through rates from a Western point over several roads to a seaboard city, all the roads constituting the line should be parties.

Smith v. Northern Pacific Railroad Company. (1 I. C. C. Rep., 208.)

69. The sale of "land explorers' tickets" and "settlers' tickets" at less than the regular rates charged to passengers at the usual ticket offices, as practiced by the Northern Pacific Railroad Company, is unjust discrimination.
70. Discrimination in rates charged passengers who enjoy the same accommodations is not justified by proof that the carrier's present or future business will be thereby stimulated, or that the settlement of the country will be promoted, or that those receiving the more favorable rates are persons of small means, who are about to locate permanently in the Northwest.
71. The rule under which passenger transportation should be conducted requires absolute equality of payment from all persons enjoying the same accommodations.
72. When one makes complaint under the act to regulate commerce, and sets up a personal grievance which he fails to prove, the Commission may nevertheless, if a violation of law by the defendant appears, retain the case and take the necessary steps to bring such violations of law to an end.

The Boards of Trade Union of Farmington, Northfield, Faribault, and Owatonna v. The Chicago, Milwaukee and St. Paul Railway Company. (1 I. C. C. Rep., 215.)

73. Rates must not only be reasonable in themselves, but they should be so relatively reasonable as to protect communities and business against unjust discrimination.
74. When the same carrier operates parallel lines, and for any cause accepts low rates on one of them, it should provide sufficient corresponding advantages to the patrons of the other line to preserve the substantial equality contemplated by the statute.
75. Low charges upon one of two routes operated by the same carrier should not be made up by relatively high charges upon the other, when the result disastrously affects the business of communities situated upon the latter line.

In re Procedure in Cases at Issue. (1 I. C. C. Rep., 223.)

76. Proceeding to be in the simplest form consistent with reasonable certainty. No replication required. When facts are not agreed upon, depositions may be taken on notice, and the work should be entered upon immediately after answer. Assignments for hearing made on request of either party. Parties will be heard orally or upon briefs, as they prefer.

In re Procedure concerning Questions of Law. (1 I. C. C. Rep., 224.)

77. Dilatory proceedings considered objectionable, and a single speedy hearing desired in every case; all proper questions will then be entertained, whether jurisdictional or relating to the merits of the controversy.

In re Joint Tariffs and Schedules. (1 I. C. C. Rep., 225.)

78. Schedules of joint tariffs required to be filed with the Commission by section 6 of the act need not be duplicated by each company which unites in making them. On receipt of a written statement from each corporation acknowledging the authority of the association, committee, or other traffic combination to issue tariffs in its behalf, schedules filed by such association, etc., will be credited to each road in the organization which so requests.

The Manufacturers and Jobbers' Union of Mankato v. The Minneapolis and St. Louis Railway Company and others. (1 I. C. C. Rep., 227.)

79. When, after trial, but before decision, the defendant concedes the relief sought, and reduces its tariff to the rates claimed by the petitioner, no order is made or opinion announced by the Commission; a report of the facts is made to complete the record of the case.

Raymond v. Chicago, Milwaukee and St. Paul Railway Company. (1 I. C. C. Rep., 230.)

80. Rates will not be declared unreasonable and unlawful under the first section of the act without other testimony than that afforded by comparison.
81. Rates and charges not unreasonably high of themselves can be so adjusted in their relations to each other as to give the undue preference and produce the unreasonable advantage which the third section of the act to regulate commerce makes unlawful.
82. If a railway company in establishing charges on different divisions and branches of its road so adjusts them as to divert trade and business to one locality which naturally, under an equitable adjustment of charges, would go to another, such preference is not excused by the fact that some of such charges are not entirely voluntary, but result from competition between carriers.

Evans v. The Oregon Railway and Navigation Company; Reed v. The Same Defendant. (1 I. C. C. Rep., 325.)

83. In determining what is a just and reasonable rate for a particular commodity (for example, wheat) the Commission will take into consideration the earnings and expenses of operating, rates charged upon the same commodity upon other roads as nearly similarly situated as may be, the diversities between the railroad in question and such other roads, the relative amount of through and local business, the proportion borne by the commodity in question to the remainder of the local traffic, the market value of the commodity and its gradual reduction, the reductions made by the carrier upon other articles which are consumed and necessarily required by the producers of the article in question, and all other circumstances affecting the traffic of itself and as related to other considerations entering into the charges of the carrier.

84. Upon the facts shown by the evidence in the present case: *Held*, That the rate on wheat from Walla Walla City to Portland should not exceed 23½ cents per hundred pounds when transported by the defendant railroad for the remainder of the present grain season, extending to the 30th of June, 1888.

W. O. Harwell, H. B. Montgomery, and J. W. Ponder, committee on transportation of the Board of Trade of Opelika, Ala., v. The Columbus and Western Railroad Company and the Western Railway of Alabama. (1 I. C. C. Rep., 236.)

85. The mere fact that a point is situated upon a navigable stream held not sufficient of itself to justify the lesser charge for a longer haul to such a point.
86. Competition by water, to be sufficient to justify an exception under section 4 of the act, should be actual, of controlling force, and in respect to traffic important in amount.
87. Discrimination under section 2, and prejudice and advantage under section 3, when water competition is brought forward as a justification, require the same measure of proof.
88. Parties affected are entitled to be notified in case a change in rates is asked. No order correcting the unjust discrimination now made, for want of proper parties and distinct allegations. Amendments allowed and revision of tariffs recommended to defendants.
89. Through rates and through bills of lading given on other commodities, and to other points similarly situated, should be given to Opelika on cotton, no excuse being shown for refusing same.

William H. Council v. The Western and Atlantic Railroad Company. (1 I. C. C. Rep., 339.)

90. The Commission will not go into the question of money damages when the claim presented is in its nature an action of trespass, for the reason that defendant is constitutionally entitled to a trial by jury in such a case.

91. The Commission is not authorized to award the counsel and attorney's fees, which may be given by a court under the eighth section of the act.
92. Colored people may properly be assigned separate cars on equal terms. Such a separation of the races does not create undue prejudice or unjust preference.
93. Complainant, a colored man, paid the same fare as other first-class passengers, and it was only fair dealing and common honesty that he should have the security and convenience of travel for which his money had been taken.
94. Colored people who buy first-class tickets must be furnished with accommodations equally safe and comfortable with other first class passengers. The Commission finds that the car furnished complainant was only second-class in comforts for travel, and that he was thereby subjected to undue prejudice and unreasonable disadvantage, in violation of the act to regulate commerce.

Thomas J. Reynolds *v.* The Western New York and Pennsylvania Railway Company. (1 I. C. C. Rep., 347.)

95. A road being in the hands of a receiver, a complaint was instituted against the company owning it, and in the complaint the receivership was mentioned, but the company was stated as having come into possession of the road, and the receiver was erroneously called the president of the company. The petition was served on him, and an answer was filed by the company. Under the circumstances it was held proper to allow the petitioner to amend his complaint so as to show the existence of the receivership.

In the matter of the Express Companies. (1 I. C. C. Rep., 349.)

96. The mere fact that a common carrier does other business besides the transportation of passengers or property, or performs a further service than that of transportation in respect to the articles carried, *held*, not sufficient to exclude the carrier from the operation of the act, so far as applicable to its business.
97. The act to regulate commerce is highly remedial in purpose and scope, and should receive a liberal construction, with the object of making the beneficial result desired by Congress operative to the greatest available extent.
98. The relation of express companies to interstate commerce considered with the extent and method of their participation therein. The bringing them within the provisions of the act found practicable, and on some accounts, desirable.
99. Express business, conducted as a branch of the business of the railroad company, *held* to be subject to the act.
100. Express business, conducted by an independent organization, acquiring transportation rights by contract, *held* not to be described in the act with sufficient precision to warrant the Commission in taking jurisdiction thereof.

Riddle, Dean & Co. *v.* The Baltimore and Ohio Railroad Company. (1 I. C. C. Rep., 372.)

101. In deciding upon applications for the amendment of complaints the Commission acts upon the principles recognized in courts of justice.
102. An amendment which proposes to substitute for the original cause of complaint something quite distinct and different will not be allowed. If the party desires to make a new case, he should do so by a new complaint.

Riddle, Dean & Co. *v.* The Pittsburgh and Lake Erie Railroad Company. (1 I. C. C. Rep., 374.)

103. Where, according to its usual experience, a railroad company has sufficient equipment to meet the demands upon it, and to move without unreasonable delay the freights offered, but by reason of unusual circumstances for which the company is not in fault freights have accumulated to an exceptional extent, and are then offered in extraordinary quantities, the company is not chargeable with any violation of law because of its proving unable to respond at once to all calls, and to furnish cars as rapidly as shippers demand them.
104. Nor does it violate any law by refusing to allow its cars to be sent off its line to distant points when the business offered on its own line keeps them fully occupied.
105. Where, by reason of extraordinary circumstances, a railroad company can not promptly meet all calls for cars, it should furnish them ratably and fairly to all shippers in proportion to the freights offered by them respectively, until the emergency has passed, and it is again enabled to move promptly all the freights tendered.
106. Upon the facts in this case the charge of unjust discrimination as between shippers and also between different classes of traffic is *held not made out*.

Thomas J. Reynolds *v.* Western New York and Pennsylvania Railway Company, and G. Clinton Gardner, receiver of the Buffalo, New York and Philadelphia Railroad Company. (1 I. C. C. Rep., 393.)

107. Classification of railroad ties should correspond with that of other rough lumber. Raising of same from sixth to fifth class unjustifiable.
 108. Rates established by a common carrier in order to keep upon its line material for which the road has use, or to keep the price low for its own advantage, can not be justified.
 109. Producer of railroad material is entitled to sell it when he wishes in the best available market. Common carriers are forbidden to attempt to prevent this by applying disproportionate or unreasonable rates.
 110. Special classification of lumber should be extended to railroad ties at the points in question.
- B. S. Crews *et al.*, committee, etc., *v.* The Richmond and Danville Railroad Company. (1 I. C. C. Rep., 401.)
111. It is not a ground of complaint against a railroad company that it equalizes its rates as between small and large towns, even though the effect may be prejudicial to the large towns which before had been specially favored.
 112. The spirit and purpose of the act to regulate commerce requires that when the circumstances and conditions will fairly admit of it the charges to all points for a like service should be made relatively equal.
 113. When the reasonableness of rates is in question, the charges made on long through lines can not, for reasons which are stated in the opinion, form a just basis for comparison with local rates for relatively short distances.
 114. A carrier is not made responsible for rates made by a connecting road because merely of its giving them in connection with its own rates to parties desiring to make through shipments.
 115. A carrier is not compellable by law to give to the merchants of a town on its line the privilege of shipping their goods from the point of purchase to their own locality, and again from thence to the place to which the goods may be sold by them, at the same rate which would have been charged had there been but one shipment from the point of purchase to the point of ultimate delivery.
 116. The fact that a refusal to give the through rate as for one shipment operates prejudicially to the town desiring the privilege and favorably to another town does not make the refusal operate as unjust discrimination when the carrier applies the same rule to all towns and accords the privilege to none.
 117. Discrimination must consist in the doing for or allowing to one party or place what is denied to another; it can not be predicated of action which in itself is impartial.

William H. Heard *v.* The Georgia Railroad Company. (1 I. C. C. Rep., 428.)

118. Passengers paying the same fare upon the same railroad train, whether white or colored, are entitled to equality of transportation in respect to the character of the cars in which they travel and the comforts and conveniences supplied.
119. Separation of white and colored passengers paying the same fare is not unlawful, if cars and accommodations equal in all respects are furnished to both and the same care and protection of passengers observed.
120. By requiring the petitioner, who had paid a first-class fare, to ride in a half car set apart for colored passengers, with accommodations and comforts inferior to the car for white passengers in the same train who paid the same fare, and without the protection against annoyances furnished to white passengers, the Georgia Railroad Company subjected him to undue and unreasonable prejudice and disadvantage, in violation of the third section of the act to regulate commerce.

The Boston Chamber of Commerce *v.* The Lake Shore and Michigan Southern Railway Company, the New York Central and Hudson River Railroad Company, and the Boston and Albany Railroad Company. (1 I. C. C. Rep., 436.)

The same *v.* The Lake Shore and Michigan Southern Railway Company.

The same *v.* The New York Central and Hudson River Railroad Company.

121. The relative reasonableness of rates on shipments from western points to cities on the Atlantic seaboard is to be determined by all the circumstances and conditions that affect the traffic to the respective points between which the rates are questioned, and not solely by one standard of comparison.
122. The length and character of the haul; the cost of the service; the volume of business; the condition of competition; the storage capacity, and the geo-

graphical situation at the different terminal points, are all elements of importance bearing upon the relative reasonableness of the respective charges for transportation.

123. The fact that the export rates through Boston, and the rates on merchandise intended for coastwise points east of Portland, and the west-bound rates from Boston, have been made by the carriers the same as corresponding New York rates, in order to put Boston on an equality with New York and other seaboard cities wherever Boston is a competitor with those cities, is not controlling in determining the reasonableness of east-bound Boston local rates on a traffic in which there is no competition by other cities.
124. In view of the longer haul to Boston than to New York; the greater cost of transportation to Boston; the very much greater volume of business to and from New York; the competition by water transportation by the lakes, Erie Canal, and Hudson River, and also by several railroad lines; and the geographical and commercial advantages of New York; the differentials on Boston local rates of 10 cents per 100 pounds on the first and second classes of merchandise, and of 5 cents per 100 pounds on the four other classes, between New York and Boston, on traffic originating west of Buffalo, have not been shown to be unjust or unreasonable, or to constitute unjust discrimination against Boston.

James Pyle & Sons v. The East Tennessee, Virginia and Georgia Railway Company. (1 I. C. C. Rep., 465.)

125. By the classification of the Southern Railway and Steamship Association adopted by the East Tennessee, Virginia and Georgia Railway Company on shipments of pearline and common soap from New York to Atlanta, Ga., pearline is in fourth-class freight with a rate of 73 cents per 100 pounds, while common soap is in sixth-class freight with a class rate of 49 cents per 100 pounds, but a "special rate" is given common soap of 33 cents per 100 pounds.

Held, That pearline being competitive with common soap, the relative difference between the class rate of pearline and this "special rate" on common soap is too great, and that pearline must be placed in fifth-class freight on shipments from New York to Atlanta by the defendant company, with a rate of 60 cents per 100 pounds, and also in the fifth class in the classification of the Southern Railway and Steamship Association, and, further, that the relative difference in the rates on pearline and common soap in such shipments must not exceed the difference of 60 cents per 100 pounds on pearline and 33 cents on soap.

Held further, That on shipments of pearline and common soap, all rail, in the territory to which the classifications of the Southern Railway and Steamship Association applies, the following rates of this association must be maintained by the defendant company, namely:

Soap powder:	Cents.
100 miles	per 100 pounds.. 32
500 miles	do.... 49
Common soap:	
100 miles	do.... 20
500 miles	do.... 38

Held, That the discrimination made by the "special rate" of the Southern Railway and Steamship Association between pearline and common soap, to the extent now existing on the shipments to which it refers, is unjust and must be discontinued, and while common soap is in its sixth class pearline must be placed in its fifth class.

126. A statement of the grounds of differences in the classification of articles of freight by railroad companies and a discussion of these, by which the conclusions of the Commission are reached, in the classification of pearline when transported all rail on the one hand, or on the other, partly by water and partly by rail, as compared with the transportation of common soap by either mode.

W. B. Farrar & Co. v. The East Tennessee, Virginia and Georgia Railway Company and the Norfolk and Western Railroad Company. (1 I. C. C. Rep., 480.)

127. The local rates from Dalton to Knoxville, Johnson City, and Bristol on lumber are not shown to be unreasonable.
128. The joint rates on lumber from Dalton to Roanoke and Lynchburg are shown to be unreasonable, upon the grounds and for the reasons set forth in the report and opinion of the Commission.

129. As a rule, in the transportation of freight by railroads, while the aggregate charge is continually increasing the further the freight is carried, the rate per ton per mile is constantly growing less all the time, making the aggregate charge less in proportion every hundred miles after the first, arising out of the character and nature of the service performed, and the cost of the service; and thus staple commodities and merchandise are enabled to bear the charges of this mode of transportation from and to the most distant portions of the country.
 130. The act to regulate commerce, so far from throwing hampering restrictions or obstacles in the way of the operation of this salutary rule, gives it all the benefit and aid of its sanction and safeguards by providing that the carrier shall be entitled to receive a reasonable compensation for the service performed upon open published rates, against which no competitor can take advantage by allowing shippers secret rebates and drawbacks in order to get the business.
 131. In the nature of things joint rates on long hauls usually are, and as a rule should be, lower in proportion to distance than local rates on short hauls of the same commodity.
- Riddle, Dean & Co. v. The Pittsburg and Lake Erie Railroad Company. (1 I. C. C. Rep., 490.)
132. Rule stated in reference to applications for rehearings.
 133. The Commission will promptly and carefully examine an application for a rehearing with a view to the immediate correction of any error of law or fact found to exist, but will not direct a rehearing involving the expense to parties of appearing before the Commission for a reargument unless satisfied that such a reargument might have the effect of changing the result of what the Commission has already done.
 134. The statute is construed as dealing with the substance of things, and as contemplating, as far as this is possible, methods of procedure that are speedy and which come at once to the very right of questions arising in the transportation of persons and freight.
 135. Where the relation of any carrier to the matter complained of is such that it is in whole or in part materially responsible for the alleged grievance, and has direct interest in any investigation of the subject-matter involved, and the merits of the controversy can not be investigated and determined in the absence of such carrier as a party, then that carrier should be made a party to the proceeding, and if not a party, no relief can be had against it.
 136. The report and findings of the Commission upon the evidence relates only to the ascertainment and presentation of all the material facts necessary to fairly and justly present the merits of the controversy, and the Commission does not report evidence which is only cumulative, or which is immaterial or irrelevant, or mere details of evidence already embraced in substantial facts stated, upon which the findings and conclusions of the Commission are made.
- John D. Heck and L. J. A. Petree v. The East Tennessee, Virginia and Georgia Railway Company, the Knoxville and Ohio Railroad Company, the Richmond and Danville Railroad Company, the Richmond and West Point Terminal and Warehouse Company, the Coal Creek and New River Railroad Company. (1 I. C. C. Rep., 495.)
137. A railroad company, chartered by the State of Tennessee, owns a short road wholly in that State, but has never owned any rolling stock nor operated its road. The road was used and operated as a means of conducting interstate traffic in coal by companies owning connecting interstate roads. *Held*, That the short road thus used is one of the facilities and instrumentalities of interstate commerce, and the carriers using it are subject to the provisions of the act to regulate commerce.
 138. In respect to such traffic the duties of such carriers to the public are the same without respect to ownership, corporate control, the authority or means of its construction.
 139. As one of the "instrumentalities of shipment or carriage," it must be accessible to all interstate shippers on equal and reasonable terms. The public can not be deprived of this right by the separate or joint action of the carriers, and they can not be permitted to use it for purposes of discrimination between mine owners on its line.
 140. The claim for pecuniary damages presents a case at common law, in which defendants are entitled to a jury trial.

George Rice v. The Louisville and Nashville Railroad Company. (1 I. C. C. Rep., 503.)
 The Same Complainant v. The Saint Louis, Iron Mountain and Southern Railway Company.

The Same Complainant *v.* The Mobile and Ohio Railroad Company.

The Same Complainant *v.* The Cincinnati, New Orleans and Texas Pacific Railway Company.

The Same Complainant *v.* The Cincinnati, New Orleans and Texas Pacific Railway Company and the Alabama Great Southern Railroad Company.

The Same Complainant *v.* The Mississippi and Tennessee Railroad Company.

The Same Complainant *v.* The Newport News and Mississippi Valley Company and the Louisville, New Orleans and Texas Railroad Company.

The Same Complainant *v.* The Newport News and Mississippi Valley Company and the Illinois Central Railroad Company.

The Same Complainant *v.* The Illinois Central Railroad Company.

141. When for a special traffic, *e. g.*, the transportation of petroleum oils, a carrier provides rolling stock for one method, but does not provide it for another for which it publishes rates, but the shippers are expected to provide the same, the terms on which such rolling stock is to be provided should be uniform and be published with the rate sheets, and can not lawfully be left to be the subject of bargain and of different terms in the case of different shippers.
 142. It is properly the business of a carrier by railroad to supply the rolling stock for the freight he offers or proposes to carry; and if the diversities and peculiarities of traffic are such that this is not always practicable, and consignors are allowed to supply it for themselves, the carrier must not allow its own deficiencies in this particular to be made the means of putting at unreasonable disadvantage those who make use in the same traffic of the facilities it supplies.
 143. When two methods for the transportation of an article of merchandise are nominally offered by the carrier, for only one of which it offers rolling stock, and for the other of which the shipper must supply his own rolling stock at considerable expense, it can not be said that the resort to the latter by the shipper is so far a matter of choice that he has no concern with the charges for transportation in the other mode. The man of small means being compelled to make this choice by reason of the carrier's failure to supply rolling stock for the other mode, has a right to insist that the charges by transportation in the two modes shall be relatively just and equal.
 144. When oil is transported in tanks permanently affixed to car bodies, the tank is to be considered as part of the car; and for oil transported therein the charge for transportation should be the same by the hundred pounds that the carrier charges for transportation between the same points of barrels filled with like oil and taken in carload lots. The carrier is guilty of unjust discrimination if the shipper in barrels is charged a higher rate.
 145. Neither the fact that the shipper in the one case supplies the rolling stock, nor the alleged fact, which is not found sustained, that for the tanks there is a greater probability of return loads, nor the further alleged fact that with barrel shipments there are greater risks to the carrier's property and that which it carries, can justify imposing upon the barrel shipments the greater burden.
 146. Under this rule the carrier will be at liberty and will be expected to make to the owner of tank cars a reasonable allowance for their use.
 147. When an important question is raised by the pleadings in a case, the determination of which will affect others quite as much as the parties before the Commission, but the parties give their attention almost exclusively to other questions, and neither by the evidence nor in argument supply the Commission with the information to enable it to be understandingly determined, the Commission will decline to decide it, and leave the parties to bring it forward again as they may be advised.
- Riddle, Dean & Co. *v.* The New York, Lake Erie and Western Railroad Company and the Pittsburg and Lake Erie Railroad Company. (1 I. C. C. Rep., 594.)
148. Contracts between railroad companies for the advantageous transaction of business at a given point involve corresponding obligations to the public.
 149. Regular patrons are not entitled to preference in the use of equipment of common carriers; the public must be justly and equally served.
 150. Obligation of common carriers to transport freight arises upon tender of same for transportation in the usual way, without any special agreement; compensation for the service is secured by a lien upon the goods, except when payment in advance is made.
 151. Selection of either goods or customers is forbidden to common carriers; less desirable traffic which is ordinarily the subject of transportation and not dangerous to handle, must be accepted upon reasonable terms, as well as that which is more desirable.

152. It is not a valid excuse for refusal to furnish a fair allotment of a certain class of cars that they can be more profitably employed, and can supply the wants of a larger number of shippers upon another portion of the line.
153. Undue preference found to have been given by defendants, to the prejudice of complainants, upon the facts stated.

Riddle, Dean & Co. v. The Baltimore and Ohio Railroad Company. (1 I. C. C. Rep., 608.)

154. A statement of the evidence from which it appears that it was the duty of the Yough Slope mine, its owners and agents, to have inquired of the station agent of the railroad company near by the mine on the 30th day of August, 1887, and on the next day, by which they would have learned that the mine could have obtained cars for the shipment of coal to Arthur & Boylan at Cleveland, Ohio, and they having failed to do this, in consequence of which the Youghiogheny and Ashtabula mines received nearly all these cars for this purpose, without any partiality or preference on the part of the railroad company.

Held, upon these facts, that a complaint of unjust discrimination against the Yough Slope mine, and in favor of the Youghiogheny and Ashtabula mines, can not be sustained.

155. Where a complaint is made by a shipper that an unjust discrimination was perpetrated by a railroad company against him at a particular time named, in a case like the present, to rebut the inference arising from circumstances, calling for explanation, amongst other evidence, the carrier may show that during a long course of business, neither it nor any of its agents have ever shown any unfriendly spirit whatever toward the shipper, and that, on the contrary, its agents immediately before the matter complained of made extra exertions in good faith to serve the shipper in obtaining cars for him from the connecting line to which the shipper had to look for such cars.

156. In the absence of some custom and rule of business placing such duty upon the carrier to notify the shipper without inquiry on the part of the latter of the fact that he can then obtain cars for the movement of his freight, it is the duty of the shipper by reasonable inquiry made to the proper agent of the railroad company, to obtain this information for himself; but in a case like the present, if the carrier took upon itself the duty of actually notifying the Youghiogheny and Ashtabula mines on the 30th of August, 1887, without waiting for any inquiry on their part, that they could get cars, then, in like manner, it was its duty to have notified the Yough Slope mine at the same time that it could get cars.

Held, That, tested by these rules, no case of preference or unjust discrimination is made out by the evidence in favor of the Youghiogheny and Ashtabula mines and against the Yough Slope mine.

In the matter of the Tariffs of the Columbus and Western Railway. (1 I. C. C. Rep., 626.)

157. Tariffs not conforming to fourth section criticised. Circumstances stated found not sufficient to warrant deviation from the law.
158. Carriers should bring their tariffs into conformity with the statute without suggestions from the Commission as to details.

The La Crosse Manufacturers and Jobbers' Union v. The Chicago, Milwaukee and Saint Paul Railway Company, the Chicago and Northwestern Railway Company, and the Chicago, Burlington and Northern Railroad Company. (1 I. C. C. Rep., 629.)

159. The fact that the rates of a railroad company are not established on a mileage basis does not necessarily make out their illegality or injustice.
160. A prayer in a petition against a railroad company, that the company be required to make its rates from one terminus to the town from which the petition proceeds and to other towns in the same section, and also from such terminus to the petitioning town and from thence to such other towns, on a uniform and equal mileage basis, can not be granted, the Commission having no power to require the adoption of such a basis.
161. A complaint will not be filed of which no reasonable ground for investigation appears.

In the matter of Underbilling. (1 I. C. C. Rep., 633.)

162. Underbilling, a device by which a shipper pays for the transportation of a less quantity of freight than is actually carried, and thereby obtains a reduced rate upon the gross shipment, is forbidden by the act to regulate commerce.
163. Unjust discrimination results from underbilling, in that the favored shipper pays a less sum than is charged others for the same service.

164. Common carriers are bound to exact equality in their service of the public.
165. Organized action by carriers to prevent underbilling commended; their duty to put an end to the practice insisted upon.
166. Carriers should be held, and in turn should hold every agent, responsible for the shipment of goods at exact weights and correctly classified.
167. Commissions paid to soliciting agents when divided with shippers effect a breach of the law.
168. Shippers should be required to extend to carriers the same honesty expected in other commercial transactions.
169. Preferences obtained by underbilling explained, and remedies suggested.
170. Legislation recommended imposing a moderate penalty upon shippers who willfully and fraudulently obtain reduced rates of transportation for their property.

John H. Martin and M. H. Martin v. The Southern Pacific Company, the Central Pacific Railroad Company, and the Union Pacific Railway Company. (2 I. C. C. Rep., 1.)

171. Mixed carload lots of freight are treated in different ways under the classifications employed in different parts of the country, resulting in much confusion and annoyance to shippers, especially upon traffic passing from one section to another. The immediate adoption of a uniform and reasonable rule urgently recommended.
172. Classification of dried fruits and raisins, both California products, in different classes, taking different rates of freight, works an injustice to shippers. In all matters of classification clearness and simplicity should be aimed at, and irregularities and inconsistencies should be eliminated.
173. Rates obtained by combination, which produce a lower rate than the tariff calls for, are unjust, because they enable an intelligent shipper to obtain an advantage over one who has less information, and they are illegal because they show two rates to the same point, over the same line, at the same time. The tariff rates should not exceed the combination rates in any case.
174. Violation of the fourth section of the act can be accomplished by differences in classification as well as by differences in tariff rates.
175. Canadian competition at the present time does not justify a higher charge from San Francisco to Denver than to Kansas City, it having been withdrawn at the latter point, and the Canadian road now working upon an agreement as to rates with the roads in the United States at all points where it formerly competed.
176. The great distance of Denver from the Missouri River of itself denotes an impropriety in the charges to that point which exceed those to Kansas City.
177. *In re Louisville and Nashville Railroad Company* (1 I. C. C. Rep., 31) affirmed; and in accordance with the principles there laid down, the conclusion follows that the greater charge for the shorter haul complained of in the present case can not now be justified.
178. The commission prefers to permit the carriers to work out for themselves all tariff details, and accords a reasonable time for that purpose.

Euclid Martin and others, constituting the freight bureau of the Omaha Board of Trade v. the Chicago, Burlington and Quincy Railroad Company, the Chicago and Northwestern Railway Company, the Union Pacific Railway Company, the Chicago, Milwaukee and Saint Paul Railway Company, the Chicago, Rock Island and Pacific Railway Company, and the Burlington and Missouri River Railroad Company in Nebraska. (2 I. C. C. Rep., 25.)

179. The principles laid down in the case of *Crews v. The Richmond and Danville Railroad Company* (1 I. C. C. Rep., 401) restated and reaffirmed.
180. Trade centers of large commercial towns are not, as a matter of right, entitled to have more favorable rates than the smaller towns for which they form distributing centers; and if carriers shall give to such smaller towns rates as favorable as to the larger, the commission will not interfere.
181. The fact that, under rates which are impartially arranged as between large and small towns, one large distributing center may have an advantage over another in competition for the business of the small towns, does not make out a case of undue preference in favor of the one distributing center as against the other. Impartial rates are not rendered illegal by their effect upon the business of localities.
182. A distributing center, however great or important, can not demand, as a matter of right, that the rates from a common source of supply to more distant and smaller towns shall be made up of the sum of the rate to itself and the rate thence to such smaller towns; but the carriers may make rates from the common source of supply to the smaller towns directly, as single rates; and if the single rate is less than the sum of the two which are made

to and from the distributing center, it is not, for that reason, necessarily objectionable.

183. A case can not be decided on a theory which is neither presented by the complaint nor advanced on the taking of the testimony.

184. What constitutes local and what through rates considered.

The Business Men's Association of the State of Minnesota v. The Chicago, Saint Paul, Minneapolis and Omaha Railway Company. (2 I. C. C. Rep., 52.)

185. One feature of the transportation of freight by railroads in long hauls on joint rates, or what is usually called through rates, unless there be exceptional conditions which modify the rule, is that the rate per ton per mile grows less in proportion to the greater distance, while the aggregate of the rate increases in proportion to such greater distance; but this is not found to exist in the case of the local rates of a railroad, where the stations are occasionally grouped, but more usually graded according to distance, except as an incident of rare and highly exceptional conditions of the transportation service.

186. The method of testing the freight rates of a railroad by the rate per ton per mile is one by which these rates may be brought down to the narrowest point of scrutiny, and in this sense is valuable, but it is like looking at them with a microscope, for it ignores all other tests except that which it alone furnishes, and does not take into consideration any of the surrounding circumstances and conditions that enter into the making of the rate, no matter how compulsory or imperious these may be, and for this reason it can not be considered a controlling rule in determining the reasonableness of rates.

187. To determine the reasonableness and justness of any freight rate made by a railroad company, all the surrounding circumstances and conditions must be considered, as well as the rights of the shipper, and if these circumstances and conditions are so compulsory or imperious that they fairly and justly exercise any controlling influence in the making of the rate, they can not be disregarded in a proceeding in which the reasonableness and justness of the rate is presented for determination.

188. The words "substantially similar circumstances and conditions," as found in the second and fourth sections of the act to regulate commerce, in certain important particulars define the rights and duties of carriers and the rights of shippers as well. For example: If the carrier claims to act under the compulsion of circumstances and conditions of his own creation or connivance in the making of an exceptional rate, then these will not avail him. Or if the carrier claims to act under a compulsion of circumstances and conditions in the making of an exceptional rate which he could obviate by reasonably fair and just exertion on his part, then they will not avail him. But if the carrier is in good faith acting under a compulsion of circumstances and conditions beyond his control, not of his own connivance, and which he could not obviate by any reasonably fair and just effort on his part, and to avoid large loss adopts exceptional rates on a portion of his line, not unreasonable in themselves, and forced upon him by the action of an independent State railroad, which is not subject to the act to regulate commerce, and which is operating a slightly shorter and competing line with his own, these are circumstances and conditions under the operation of the statute which justify him in adopting such exceptional rates thus forced upon him on this portion of his line.

189. When a carrier, acting in good faith, has adopted an exceptional rate, not unreasonable in itself, on a portion of its line, because that rate has been forced upon it by an independent State railroad company in direct competition with it and not subject to the act to regulate commerce, the reasonableness and justness of rates on other portions of the carrier's line, extending into a far interior region of the country where no such conditions exist, can not be measured, alone, by the standard thus furnished, but must be governed by considerations which fairly and justly apply to them.

190. The exceptional conditions of railroad transportation in proximity to the waterways of the great lakes, Michigan and Superior, and of rival competing railway lines operating between the ports on these lakes, as to the method of grouping stations under the combined effect of the competition of these waterways and of the fourth section of the act to regulate commerce, are found and stated by the Commission in this proceeding, citing and approving the *Manufacturers and Jobbers' Union of La Crosse* against the *Chicago, Milwaukee and Saint Paul Railway Company* (1 I. C. C. Rep., 632).

191. The conditions of transportation on that portion of defendant's lines in a broad extent of far interior country, where it is in competition with other great

rival railway lines extending to Lake Michigan ports, while that of the defendant extends to Lake Superior ports, and the relation of each, arising therefrom, examined, found, and considered by the Commission.

192. The act to regulate commerce was not enacted to destroy competition, and the establishment of the rule of the rate per ton per mile, insisted upon by the complainant, would have very much the effect of practically making the rates charged for a long distance at the stations along the line of the defendant and its great rivals, the Chicago, Milwaukee and Saint Paul Railway and the Minneapolis and Saint Louis Railway, in the nature of strict mileage rates, thereby destroying competition to a large extent at these stations, unsettling the business of their shippers, conferring upon them no practical benefits, and loading the business of the carrier and the shipper at every such station with a multitude of infinitesimal fractions nowhere known in the business of railroads.
193. Elaborate tariffs of rates, the result of competition, made by one of several great railway systems, all competing for the business of a large extent of territory, are examined and considered in connection with those of its competitors, and with a view not to break down the legitimate competition thus existing, whereby rates are cheapened to the public generally, and these railways are correspondingly benefited in performing the work for which they were chartered and constructed.

The Business Men's Association of the State of Minnesota v. The Chicago and Northwestern Railway Company. (2 I. C. C. Rep., 73.)

194. The circumstances and conditions as to the transportation of freight on the line of the defendant between Chicago and St. Peter, on the one hand, and between St. Peter and Pierre on the other, found, examined, and considered by the Commission, and held to be substantially dissimilar upon the facts set forth in the report and findings in this proceeding.
195. The rule of the rate per ton per mile decreasing for the greater distance while the rate is increasing in the aggregate, examined and discussed by the Commission, in its application to the present proceeding, and held to be inapplicable.
196. The difference between the cost of service by which the local business of this railroad and its through business is done relatively, examined and considered by the Commission so far as they are involved in this proceeding.
197. Comparison of rates charged by railroad companies under circumstances and conditions substantially dissimilar really proves nothing, and can not be adopted as standards in arriving at the reasonableness and justice of rates.
198. Exceptional cases of rates made lower than other rates by a carrier on one portion of its line by the action of a competitor, and in which it is without fault itself under the operation of the act to regulate commerce, can not be adopted as the standard as to other rates upon a far distant portion of its line where no such exceptional conditions exist, and the reasonableness of its rates must be determined by altogether different considerations.
199. Where the evidence adduced in a proceeding like this fails to establish grounds relied upon, as stated in the complaint, and upon which it is heard and tried before the Commission by the parties and their counsel, and to which the evidence is directed, but shows that upon a portion of its line, as, for example, between St. Peter, in the State of Minnesota, and Pierre, in the Territory of Dakota, that the rates are made upon a basis which seems to grade them with large differences between stations contiguous to each other, and the grounds assigned for this by the carrier are the additional cost of service incident to operating a new line through a thinly inhabited and but little cultivated country, with very light traffic, and in which the transportation is seriously impeded by snow blockades, and where the coal used for fuel in operating the trains has to be brought by the carrier a distance of nearly 500 miles, but the evidence is not given with that fullness of detail which should sustain such extra rates of charge, the Commission, while it will not hold the rates to be unreasonable, will also not hold that they are reasonable, but will investigate this question in a separate proceeding under the statute by which all the parties in interest will have an opportunity to be fully heard, and can bring forward all the evidence upon a subject that is important and involving valuable rights, alike to the public and to the carrier.
200. When, in a proceeding such as this, evidence is introduced by a party and he is permitted to do so for the single purpose of the bearing it may have upon the reasonableness of the rate, which would be inadmissible for any other purpose, and it tends to show a difference of rates of the carrier by which a combination could be made of those rates upon the different tariffs that would be improper and unjust, the carrier not being allowed to controvert

it upon the hearing, as to any other feature, except so far as it had a bearing upon the reasonableness of rates, because it would involve a collateral inquiry, the Commission will not determine this collateral inquiry or the question it presents until an opportunity has been furnished the parties to be heard in a proceeding such as is provided for by the statute. For example: Where the complaint of the petitioner makes no allegation that under the tariffs of the carrier freight may be shipped from Chicago to St. Peter at one rate, there unloaded, and then subsequently reshipped from St. Peter to each of the stations between St. Peter and Pierre at a rate which, added to the rate from Chicago to St. Peter, is considerably less than the direct rate from Chicago to each of these stations, but on the hearing the complainant is allowed to introduce evidence upon this subject simply for the purpose of showing that the rates between St. Peter and Pierre are unreasonable and for no other purpose, the carrier having at the time the complaint was made a number of tariffs as follows: A distance tariff for the State of Illinois, a distance tariff for the State of Wisconsin, a distance tariff for the State of Minnesota, a distance tariff for the Territory of Dakota, local tariffs to and from all points on its line in each of the States through which it passes and the Territory of Dakota, and a tariff from and to Chicago and all points along its line, extending to Pierre, a distance of 781 miles.

William C. Scofield, Daniel Shurmer, John Teagle, and Charles W. Scofield, partners under the firm name and style of Scofield, Shurmer & Teagle; James R. Timmins and Andrew R. Timmins, partners under the firm name and style of J. R. Timmins & Co.; Christian J. Werwage, doing business under the name and style of The Manufacturer's Oil Company; John W. Fawcett and Thomas F. Wright, partners under the name and style of J. W. Fawcett & Co.; Alfred Whitaker, doing business under the name and style of The Brooks Oil Company; William F. Vliet, Willard L. Nutt, and Martin P. Case, partners under the name and style of Vliet, Nutt & Co.; W. Carroll Lawrence, Felix Burgert, Henry C. Meyers, and August E. Schade, partners under the name and style of The Merchants' Oil Company; The Excelsior Refining Company, a corporation organized under the laws of Ohio; The Globe Oil Company, a corporation organized under the laws of Ohio; The Cleveland Refining Company, a corporation organized under the laws of Ohio; Louis C. Carran, doing business under the name and style of L. C. Carran & Co., v. The Lake Shore and Michigan Southern Railway Company. (2 I. C. C. Rep., 90.)

201. Upon the facts of this case it is found, and held, that there is an unlawful preference given by the carrier, in favor of oil shipments in tank-car lots, as against like shipments in barrels, car-load lots, which is ordered to be corrected, and the mode prescribed by which this must be done, giving equal rates on each per pound.
202. It is a common law and charter duty of every railway carrier subject to the act to regulate commerce to furnish a proper and adequate car equipment for all the reasonable needs of the business it advertises and undertakes to do, and if the carrier fails to do this, to the wrongful injury of the shipper, it is liable in damages therefor, but the statute has not clothed the Interstate Commerce Commission with the jurisdiction to order the carrier to furnish any particular equipment of cars, or, in fact, any cars at all. It is the duty of such carrier to select and furnish its own equipment of cars, under all the responsibility which the law requires of it in so vital and important a matter, for the public has not undertaken to divide responsibility with the carrier in this respect.
203. The law does not forbid a carrier from obtaining cars for the transportation of freight over its line from other carriers or car-furnishing companies, but in every such instance the rates of freight must be exactly the same, and none other, as they would be if such cars were owned by the carriers so using them.
204. The law does not forbid a carrier from obtaining cars from a shipper for the transportation of such shipper's freight over its line, but in every such instance, after deducting a reasonable rent published in the tariff as part of the rate and paid by the carrier to the shippers for the use of such cars, the rates must be exactly the same, and none other, as upon freight transported in the same service in the carrier's own cars; and in every such transaction the carrier, at his peril, must see to it that a shipper furnishing his own cars receives no other or different rates than other shippers who use the cars of the carrier for a similar service.
205. To render a preference of one over another unlawful, under the act to regulate commerce, it is not necessary that it should be accomplished by any "device," and it is equally true that the ingenuity of man can not invent

a "device" for the perpetration of an unlawful preference on the part of a carrier engaged in interstate commerce without incurring the penalties prescribed by the statute.

206. In this particular instance, on account of the phenomenal differences in expense of service rendered, the exceptionally high rates on oil in barrels less than carload lots as compared with oil in carload lots are sustained, but the defendant and all other carriers engaged in interstate commerce are notified that there seems to be too great a tendency on their part to make excessive differences in favor of all shipments generally in carload lots as against shipments of similar articles in less than carload lots, and that it would be well for each of them to look to their tariffs in this respect before the Commission takes further action on this subject.

Frank L. Hurlburt *v.* The Lake Shore and Michigan Southern Railway Company. (2 I. C. C. Rep., 122.)

207. In a proceeding to correct a classification of freight made by the initial carrier, which freight before reaching its destination must pass over the roads of several carriers, it is proper to make all such carriers parties; but if the initial carrier alone is made defendant, the proceeding is not for that reason defective. An order requiring that carrier to make the correction will be effectual for the purposes of all subsequent consignments, and there is no difficulty in its being complied with without asking the consent of others.
208. Persons having an interest in a question pending before the Commission will be allowed to appear and be heard when the case is being submitted without their being made formal parties.
209. Assurances made by a carrier that if one will locate in business on the line of its road his property shall be taken for transportation as belonging to a specified class can not bind the carrier so as to compel a classification accordingly. A right to special rates can not be made out in that way; the classification must have the same construction in favor of all persons; the law requires uniformity and impartiality in the dealings of a carrier with all persons.
210. The railway officials who have made a classification can not testify to their understanding of its construction. A classification sheet is put before the public for general information; it is supposed to be expressed in plain terms so that the ordinary business man can understand it, and in connection with the rate sheets can determine for himself what he can be lawfully charged for transportation. The persons who prepared the classification have no more authority to construe it than anybody else, and they must leave it to speak for itself.
211. It is competent to prove by the testimony of witnesses in what sense terms of art or terms peculiar to any occupation or business are used by those engaged in such occupation or business. But when such terms are made use of in a classification sheet to designate the product of a particular employment, they are supposed to be used as understood in that employment, and it is not competent for railroad experts, when the meaning of the classification is in question, to testify in what sense they are understood in transportation circles.
212. Under a classification which puts lumber in carload lots in the sixth class, and unfinished wagon materials in the fifth class, it is held that hub blocks which are prepared as such to be sold to the manufacturers of hubs and of wheeled vehicles, but upon which only so much labor has been expended as is useful to put them in condition for seasoning, are to be regarded as the raw material upon which the process of manufacture of hubs is not yet begun, just as boards or the raw material from which wagon boxes are made. The blocks belong, therefore, when not otherwise specified, in the classification sheet with lumber, instead of with unfinished wagon materials.

John W. S. Brady and George T. Parkhurst, partners, trading under the firm name of J. Parkhurst & Co., *v.* The Pennsylvania Railroad Company, the Pennsylvania Company, the Pittsburgh, Cincinnati and Saint Louis Railway Company. (2 I. C. C. Rep., 131.)

John Henry Nicolai, trading as "Eagle Oil Works," *v.* The Pennsylvania Railroad Company, the Pennsylvania Company, the Pittsburgh, Cincinnati and Saint Louis Railway Company.

213. Through and continuous lines imply through rates, which must be reasonable rates.
214. When railroad companies make a through and continuous line and offer it for the use of the public, they can not rid themselves of responsibility for unjust charges by breaking the haul in two and calling themselves carriers on the separate ends of their through line.

215. The Pennsylvania Railroad Company operates a part of a through line which it joins in making, and owns a controlling interest in the capital stock of the Pittsburgh, Cincinnati and Saint Louis Railway Company, by which the other part is operated. *Held*, That the Pennsylvania Railroad Company can not free itself from the responsibility of excessive through rates by getting behind the corporate existence of the other company as a separate carrier.
216. The apportionment of rates to different parts of a through line does not determine the charge to the public, but may be significant on the question of reasonable rates for the whole distance.
217. The danger from transportation of oil through Pittsburg when apportioned upon all the business is deemed so unimportant as not to materially affect the rates which should be charged.

The New Jersey Fruit Exchange v. The Central Railroad Company of New Jersey and the Lehigh Valley Railroad Company. (2 I. C. C. Rep., 142.)

218. Rates for the transportation of fruit. The traffic originates in the State of New Jersey, and is destined to the city of New York. But the delivery by the defendants to the consignees is made at Jersey City, in New Jersey, and the rates of defendants are made not to New York, but to Jersey City. Under these facts, the traffic, so far as defendants conduct it, is not interstate, and the Commission has no jurisdiction over their rates.
219. As to certain traffic originating in New Jersey and destined to Pennsylvania, it is held that the showing is too indefinite for any conclusion.

The Lincoln Board of Trade v. The Burlington and Missouri River Railroad Company, in Nebraska, and the Chicago, Burlington and Quincy Railroad Company. (2 I. C. C. Rep., 147.)

220. Municipal subscriptions or gratuities do not affect the question of undue preference under section 3 of the act to regulate commerce.
221. Disparity in existing rates to Lincoln and to Omaha found to correspond so closely with the difference in distance that no change is required upon that ground.
222. Principle that the ratio of rates should decrease with increase of distance conceded, but modifying conditions often exist; some of them stated; as applied to the facts in this case, no change in rates required.
223. Lincoln is not naturally entitled to the same rates from Chicago as Omaha, and if such rates were conceded Omaha would probably have a valid ground of complaint.

The Kentucky and Indiana Bridge Company v. The Louisville and Nashville Railroad Company. (2 I. C. C. Rep., 162.)

224. The Kentucky and Indiana Bridge Company has the chartered powers of a common carrier, and is such *de facto*. It is, therefore, under the act to regulate commerce, entitled to demand of railroad companies whose lines are intersected by its tracks the same reasonable, proper, and equal facilities for the interchange of traffic and for the receiving, forwarding, and delivering of property that may lawfully be demanded by other carriers under that act.
225. The Louisville and Nashville Railroad Company united with other companies having lines terminating on the Ohio River at or opposite Louisville in a contract whereby it was agreed that all their business across the river at that point should be taken over the Louisville bridge. The Louisville Bridge Company was a party to the contract, and the tolls were dependent on the amount of business done, and were diminished as the debt of the bridge company was paid off from funds derived from tolls. A new bridge being constructed over the river at this point, one of the railroad companies which had contracted to take all its business over the old bridge transferred the business to the new bridge. The Louisville and Nashville Railroad Company thereupon refused to receive for transportation over its line any freights which had been brought over the new bridge in violation of the contract made with it. *Held*, That this refusal was unlawful.
226. A common carrier by rail to which property is offered for transportation can not in this indirect manner, and by refusal to perform obligations imposed by law upon it, enforce its contracts, but must for that purpose resort to the customary remedies.
227. Nor can a common carrier, as a reason for refusal to afford to another common carrier the customary, reasonable, and equal facilities for the interchange of traffic, assign the fact that such other common carrier supplies no public necessity, the public having been fully accommodated without it. All railroads created by competent public authority must be conclusively presumed

- to be public conveniences, and other common carriers can not refuse to exchange traffic with them on any suggestion or showing to the contrary.
228. The fact that statutory regulations of internal commerce are such as to preclude the literal enforcement of preexisting contracts does not affect their validity or make them in a constitutional sense laws impairing the obligation of contracts. Such a consequence is often a necessary result of any considerable change in the general laws, and must be submitted to as such.
229. When a question of rates as between two carriers is involved, the Commission will express no opinion upon it in a case to which one of the carriers is not a party.

The Lincoln Board of Trade *v.* The Union Pacific Railway Company and the Southern Pacific Railway Company. (2 I. C. C. Rep., 229.)

230. The grounds of complaint stated in the petition having been obviated by changes in the rate sheets, the Commission abstains from any expression of opinion upon them.

The case above entitled was heard at Lincoln, Nebr., March 21 and 22, 1888, where voluminous testimony was taken. The following cases were heard with it: *I. Friend & Son v. The Southern Pacific Company*, *The Denver and Rio Grande Railway Company*, and *The Burlington and Missouri River Railroad Company*. *Raymond Brothers & Co. v. The Chicago, Burlington and Quincy Railroad Company*, *The Denver and Rio Grande Railway Company*, *The Denver and Rio Grande Western Railway Company*, and *the Southern Pacific Company*. *Plummer, Perry & Co. v. The Union Pacific Railway Company*, and *The Southern Pacific Railway Company* (two cases). *The Lincoln Board of Trade v. The Burlington and Missouri River Railroad Company in Nebraska*, *The Chicago, Burlington and Quincy Railroad Company*, *The Denver and Rio Grande Railway Company*, *The Denver and Rio Grande Western Railway Company*, and *the Southern Pacific Railway Company*.

The Lincoln Board of Trade *v.* The Missouri Pacific Railway Company. (2 I. C. C. Rep., 155.)

231. Distance by shortest route is properly to be considered in determining the propriety of rates by a longer competing line.
232. Rates from St. Louis to Omaha a little higher than those charged to Lincoln, which is a trifle less distance upon a branch line, sustained under the peculiar circumstances of the case.
233. Consideration should be had of consequences which might follow a modification of the principle upon which the rates complained of are constructed.
234. The general plan upon which rates are constructed from Chicago and St. Louis to Missouri River points and interior Nebraska points approved, no better system being as yet suggested. Difficulties which might result from throwing this system into confusion stated.
235. The operation of the fourth section of the act controls the extent to which Missouri River rates extend into the interior of Nebraska and Kansas; Lincoln and other towns lying west of that line must accept their geographical situation and its consequences.

The Delaware State Grange of the Patrons of Husbandry *v.* The New York, Philadelphia and Norfolk Railroad Company *et al.* (2 I. C. C. Rep., 309.)

236. The Commission is liberal in allowing amendments to complaints, but will not allow one that would be in effect making a new case.
237. Amendment is not necessary to bring in matters that would have been the subject of proof under the complaint as originally filed.
238. A case involving local rates ordered to be heard before the Commission at a central point in the territory immediately affected by the rates.

In the matter of the Chicago, St. Paul and Kansas City Railway Company. (2 I. C. C. Rep. 231.)

239. A railroad company which, for cases not apparently affected by water competition or by the competition of carriers not subject to the act to regulate commerce, had issued rate sheets which in many cases made for the transportation of like freights the greater charge for the shorter haul on the same line in the same direction, the shorter being included in the longer distance, was called upon to justify such rate sheets at a public hearing.
240. Notice ordered to be published of such hearing, that competing carriers and the public generally might have opportunity to attend and be heard.
241. The showing by respondent that a competitor for business between the termini of its line makes charges for the transportation of freight which are below what are reasonable and just to the carrier itself, does not alone make out the dissimilar circumstances and conditions entitling the respondent

ent to make charges for the transportation of freights from one terminus to an intermediate station which are greater than those made for the transportation of like freights from the same terminus to the other.

242. The provision in the first section of the act to regulate commerce, that "all charges made for any service rendered, or to be rendered, in the transportation of passengers or property, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful," does not render rates that are unreasonably low illegal in a sense that will authorize the Commission to prohibit their being made.
243. The Commission has no power to order rates to be increased upon the ground that they are so low that persistence in making them would be ruinous.
244. Congress, in the provision above recited regarding rates, was legislating for the protection of the general public, and not for the protection of the carriers against the unreasonable action of their own officers, or against excessive competition. The act to regulate commerce assumes that the carriers, in their power to make rates, have ample remedy to protect against rates which are unreasonably low.
245. A leading purpose of the act to regulate commerce is to prevent the giving of unjust preferences and advantages as between localities in railroad transportation. This purpose would be defeated if any one carrier by making unreasonably low rates to any locality would thereby entitle all other carriers competing with it to make on their lines greater charges upon the shorter hauls to other stations than were made over the same line in the same direction to the locality thus favored.

Nathaniel W. Howell, Hiram A. Pooler, Charles M. Thompson, Cornelius B. Wood, and A. T. Moshier, as a committee of the farmers and milk producers of Orange County, N. Y., v. The New York, Lake Erie and Western Railroad Company, The New York, Ontario and Western Railway Company, The New York, Susquehanna and Western Railroad Company, and the Lehigh and Hudson River Railway Company. (2 I. C. C. Rep., 272.)

246. A question of reasonable rates can not be properly decided without full knowledge of all the facts concerning the particular traffic in question and its relations to the other traffic of the carrier. Some of the elements stated which are necessary and proper to be considered.
247. Proof that certain rates are very profitable to the road, and that they are higher than the rates charged on certain other somewhat similar commodities, is not of itself a sufficient ground for determining either that such rates are unjust or what rates would be just and reasonable for the traffic in question.
248. Case retained for further showing upon the question of the reasonableness of the rates charged for transportation of milk and cream from producing points to Jersey City.
249. Grouped rates not peculiar to milk traffic. Other instances stated and distinguished.
250. Transportation of milk an exceedingly peculiar kind of traffic. Time of the first importance. Arrangements stated by means of which the delivery of a regular daily supply to all consumers in large cities is accomplished. The elements of extra expense are substantially the same upon milk transported from every part of the line of road over which the special milk train runs.
251. Grouping of milk rates over large extent of territory not shown to injuriously affect the producers who complain; their product is not reduced in value, nor is any part of it left unsold, while the requirements of consumers demand a steadily increasing area of supply.
252. Prejudice and advantage become undue and unreasonable when the results are such as to effect some tangible injury to the complaining party. Without some proof of damage resulting to complainants, an advantage in rates as related to distance is not necessarily undue or unreasonable, no substantial difference in expense appearing to exist.
253. The existing arrangement by which the same rate is charged for the transportation of milk from all points reached by the regular daily milk trains of the defendant roads found to be not illegal, and on the whole to be the best system that can be devised for the general good of all interested parties.
254. A considerable additional expense, such as is involved in the collection of milk beyond the end of the route of the milk train, is a fact in consideration of which a somewhat higher rate would be just, and is, perhaps, necessary in order to properly equalize the proportionate privileges of the traffic.

The Spartanburg Board of Trade *v.* The Richmond and Danville Railroad Company, The Central Railroad and Banking Company of Georgia, The Louisville and Nashville Railroad Company, The Augusta and Knoxville Railroad Company, The Port Royal and Augusta Railroad Company, The Port Royal and Western Carolina Railroad Company, The Ohio and Mississippi Railway Company, The Nashville, Chattanooga and Saint Louis Railway Company, The Saint Louis, Iron Mountain and Southern Railway Company, The Chicago, Saint Louis and Pittsburgh Railroad Company, The Jeffersonville, Madison and Indianapolis Railroad Company, The Cincinnati, Hamilton and Dayton Railroad Company, The Cincinnati Southern Railroad Company, The East Tennessee, Virginia and Georgia Railway Company, The Western and Atlantic Railroad Company, The Western North Carolina Railroad Company, The Asheville and Spartanburg Railroad Company, The Georgia Railroad Company, The Illinois Central Railroad Company, and The Cincinnati, Indianapolis, Saint Louis and Chicago Railway Company. (2 I. C. C. Rep., 304.)

255. The Commission is not willing to determine the relative reasonableness of rates at many stations, and in a large extent of territory, upon the mere face of tariffs, and without further proof.
 256. Where it is obvious that there are many parties interested as directly as is the complainant in the question before the Commission, opportunity will be given them to appear on the taking of evidence.
 257. Where, on a question of rates, it appears that higher rates are made upon the shorter hauls on the same line and in the same direction, the carrier making them must take the burden of proof to show their reasonableness.
 258. A case finally submitted without evidence ordered adjourned to a future day for the purpose of taking evidence on the principle above stated.
- C. H. Griffie *v.* The Burlington and Missouri River Railroad Company in Nebraska, and also as lessee of The Atchison and Nebraska Railroad. (2 I. C. C. Rep., 301.)
259. The offense under section 2 of the act to regulate commerce of giving free transportation to an individual consists in the charging, demanding, collecting, or receiving by the carrier from some other person or persons a compensation for a like service when none is contemporaneously charged or received from the person thus transported free.
 260. Where a free pass was given to a discharged employé of the company on the assumption that he might still be regarded as an employé, but it affirmatively appeared that it was never used, and that it expired in the hands of the party to whom it was issued by a limitation contained on its face, and was produced before the Commission as an unused instrument in a proceeding in which a complaint of its issue was made, *held*, that the facts did not show that a breach of the third section of the act had been committed, no free transportation whatever having been had, and the party being entitled to none according to the terms of the instrument as it then was.

The Detroit Board of Trade and the Detroit Merchants' and Manufacturers' Exchange *v.* The Grand Trunk Railway of Canada and The New York Central and Hudson River Railroad Company. (2 I. C. C. Rep., 315.)

261. When freight—for example, grain—is hauled to the seaboard for export, or to New England points, from the Northwestern States and Territories of the American Union; or when freight is hauled from the seaboard or New England points to the Northwestern States or Territories through the cities of Detroit and Chicago, the rule invoked by the petitioners in this case as a basis of relief, namely, that an estimated portion of this through rate as between the points of origin of the freight and Detroit, must not be lower in proportion to distance than the rate upon the freight from such points of origin destined to Detroit, is one that can not be sustained.
262. Rates must be relatively fair and reasonable as between localities in essential respects similarly situated, not according to any rule of mathematical precision, but in substance and in fact, having regard to the geographical and relative positions of the localities, so that one will not be favored to the unjust prejudice of the other.
263. Where a system of rates is made by a number of carriers covering a widely extended territory which seem to be reasonable in themselves and relatively fair, so far as the evidence in this case shows, the Commission will not order them to be changed at one important point, thereby rendering other changes unavoidable at a large number of other points, and throwing the rates of the entire system into confusion and unsettling values, unless a case arises in which it is necessary that this should be done in order to enforce compliance with the law and to reach the ends of substantial justice.

In the matter of the Tariffs of the Transcontinental Lines. (2 I. C. C. Rep., 324.)

264. Rates that are just and reasonable from selected manufacturing points, through the entire territory east of the Missouri River and west of the Atlantic sea-

board, are *prima facie* just and reasonable from all other points in the same territory.

265. A tariff naming a rate from one locality lower than that enjoyed by its neighbor, when the circumstances are the same, tenders a preference or advantage to the first; and when any shipper is damaged by the exaction of an additional burden the preference becomes undue and unreasonable, unless it can be justified upon some sound and substantial ground.
266. Common carriers are under obligations to take all descriptions of ordinary traffic from all points, and it is right that the rates should be known and announced publicly in advance of the offering of traffic.
267. Under the act to regulate, commerce shippers are not to be put in a position of subserviency to common carriers, nor required to ask for rates, but are entitled to equal and open rates at all times.
268. Discriminations are made and undue advantages are given by the special tariffs in question, in giving different rates to places named and those not named; to manufactured articles named and those not named; to jobbers at places named and those not named; to manufacturers and to jobbers and other dealers.

James C. Savery & Co., doing business under the name of The American Emigrant Company, v. The New York Central and Hudson River Railroad Company, The New York, West Shore and Buffalo Railway Company, The New York, Ontario and Western Railway Company, The New York, Lake Erie and Western Railroad Company, The Delaware, Lackawanna and Western Railroad Company, The Pennsylvania Railroad Company, and The Baltimore and Ohio Railroad Company. (2 I. C. C. Rep., 338.)

269. The matter of the reception of immigrants at the port of New York having been put by the laws of the State under the control of a board of commissioners of emigration, and that board having made such regulations as it has deemed desirable for the protection of the immigrants until they are ticketed and put on board railroad trains for their respective ultimate destinations, and the Federal Government, through its legislative and executive departments, having sanctioned the control by the commissioners of emigration, the Interstate Commerce Commission has no authority to interfere with their regulations.
270. Not having the authority to interfere directly and control the commissioners of emigration, it can not do so indirectly by inhibiting the railroad companies from carrying out the arrangements made by the commissioners with them.
271. There is nothing illegal or wrongful in a railroad company making a rate for immigrants as a class, and declining to give the same rate to others for whom different accommodations are furnished.
272. A railroad company which transports immigrants in unfit cars will be required to provide better accommodations, and to ascertain their fitness the Commission will make its own inspection.
273. The rates complained of in this case as excessive were voluntarily reduced pending the proceedings.

James F. Slater v. The Northern Pacific Railroad Company. (2 I. C. C. Rep., 359.)

274. A complaint made for the purpose of retaliation for a fancied wrong, as to get even with a carrier for the revocation of complainant's pass, does not commend itself to the Commission.
275. A carrier which has conformed to the ruling of the Commission should not be prosecuted for alleged violations of law in that respect which have occurred before such ruling was made, and under a construction of the law then approved by the carrier's counsel.
276. Free transportation issued in the form of an annual pass to a person not in the regular and stated service of the carrier nor receiving any wages or salary under a contract of employment, but requested by him as compensation for throwing in its way what business he conveniently could, held to be illegal.

In the matter of Relative Tank and Barrel Rates on Oil. (2 I. C. C. Rep., 365.)

277. In deciding a case against one or more carriers who are charged with making rates which are unjustly discriminating in a certain line of traffic, the decision made upon the facts of the particular case does not necessarily govern rates in other sections of the country where the facts bearing upon them may be altogether different.
278. In cases against carriers who were charged with discriminating unjustly in their rates as against those shipping petroleum and its products in barrels in favor of those who shipped in tank cars, the evidence, among other things, showed that in the territory served by the defendants the shipment

in barrels was most dangerous, and also that when shipment was in tanks there was greater likelihood of return loads. The difference in rates made by the carriers was considerable; the Commission equalized this, but still permitted a charge for the weight of the barrel.

279. In the same cases it was incidentally made to appear that on the Pennsylvania system of roads some of the conditions affecting rates on this traffic were the reverse of those above stated, and the rates had therefore been made the same by quantity, whether the shipment was in tanks or barrels. On the decision above referred to being made the rates on barrel oil were raised by the managers of the Pennsylvania system so as to include a charge for the weight of the barrel. This was claimed to be done in order to come into conformity with the action of the Commission. *Held*, That the action was unwarranted. A decision on facts does not establish a principle to govern where the facts are different, and no facts which had been laid before the Commission would have authorized a ruling raising the rates on the Pennsylvania road on barrel oil, either absolutely or relatively.

The New Orleans Cotton Exchange v. The Cincinnati, New Orleans and Texas Pacific Railway Company, The Alabama Great Southern Railroad Company, The Vicksburg and Meridian Railroad Company, The Vicksburg, Shreveport and Pacific Railroad Company, and The New Orleans and North Eastern Railroad Company. (2 I. C. C. Rep., 375.)

280. To correctly estimate the causes influencing the movement of cotton and the falling off in the proportion of the crop received at New Orleans in recent years, the rail lines of transportation constructed improved methods, and new conditions must be taken into account.
281. Whether railroad companies combine or act separately in making rates and charges is not so important. The essential requirement is that, however made, they shall be reasonable of themselves and so fairly adjusted as to be reasonable in their relations to each other and in their results.
282. That under like conditions freight can be carried proportionally lower for long than short distances is as nearly settled as anything relating to railroad charges can be. Equal mileage rates would often prevent legitimate competition and give a monopoly in transportation to the best and shortest road.
283. The reasonableness of rates can not be fairly determined in a proceeding to which some of the parties responsible for such rates are not parties.
284. Commerce between points in the same State, but which in being carried from one place to the other passes through another State, is interstate commerce, and subject to regulation by the provisions of the act to regulate commerce.
285. In determining what are reasonable rates the fact that a road earns little more than operating expenses is not to be overlooked, but it can not be made to justify grossly excessive rates. Wherever there are more roads than the business at fair rates will remunerate, they must rely upon future earnings for the return of investments and profits.
286. To be reasonable, the rate from Meridian to New Orleans should not exceed \$1.50 per bale, compressed cotton.

Rice Robinson and Witherop v. The Western New York and Pennsylvania Railroad Company. (2 I. C. C. Rep., 389.)

287. Where unreasonableness of freight rates on oil in carload lots is charged on short local hauls, for example, from Titusville, Pa., to Buffalo, N. Y., and the charge is attempted to be sustained on a comparison of these rates with rates on what is usually an inferior grade of oil transported from Titusville through Buffalo to Perth Amboy, N. J., for export, chiefly in the cars of another company, and it appears that upon such shipments destined to Buffalo there are expensive terminal charges, while upon such shipments to Perth Amboy these terminal charges are far less considerable, the circumstances and conditions which control the making of the rates in each instance are substantially dissimilar.
288. In arriving at what is a just and reasonable rate on freight transported by a carrier on a short local line, having but a small volume of business, where the cost of transportation is exceptionally great, arising from steep grades, sparse population, and light traffic, these are circumstances and conditions of controlling weight in the making of the rates and can not be overlooked when a question of their reasonableness is involved, and under such circumstances the fact that an independent pipe line from Titusville to Buffalo transports oil between these points at lower rates than the railroad company constitutes no just reason why the railroad company should be required to reduce its rates to those of the pipe line.

289. Where a change of rates, for example, those on the defendant's line in this instance, would involve a reduction of rates on the Dunkirk, Allegheny, Pittsburg, and other competing lines not parties to this proceeding, and unsettle relative rates in a large extent of territory, such a change ought not to be made unless based upon adequate grounds.

290. The charge of unjust discrimination is not sustained by the evidence in this case.

In the matter of Passenger Tariffs and Rate Wars. (2 I. C. C. Rep., 513.)

291. Reduction of passenger rates without consent of connecting lines over which tickets are sold, and without filing schedules thereof with the Commission, *held* to be in violation of section 6 of the act to regulate commerce.

292. A passenger rate war in which rates were repeatedly reduced by several competing lines to an exceedingly low basis on a particular class of traffic, without any filing of tariffs, was contrary to the requirements of law, as well as against the true interest of each party thereto.

293. Reductions in competitive passenger rates can not legally be made without at the same time reducing intermediate rates, as required by the fourth section of the act.

294. No necessity or compulsion is created by a war of rates which justifies disobedience of the statute.

295. The employment of ticket brokers and scalpers for the sale of railroad tickets placed in their hands to be disposed of at reduced rates under the pretense of paying commissions thereon, *held* illegal.

296. Rates lower than the established tariff are prohibited by law.

297. Rates obtained from ticket brokers lower than those offered at the regular offices of the company effect unjust discrimination.

298. The business of ticket brokers and scalpers investigated and described.

299. Existing methods respecting excursion and mileage tickets considered and found to lead to various abuses.

300. Recommendations made for amendment of the law.

William P. Rend v. The Chicago and Northwestern Railway Company. (2 I. C. C. Rep., 540.)

301. Group rates may be properly made from a large number of mines composing a coal-mining district extending across the State of Illinois to points in western Wisconsin, Minnesota, and Dakota, the distance from each part of the group by some route being substantially a fair equivalent of the distance from other parts, and the commercial necessities being substantially the same for all.

302. The group rate so established is properly extended to coal shipped to the same territory locally from Chicago, no lower rate being possible on account of the operation of the fourth section of the act, some of the lines passing through the mining district en route from Chicago to the points of distribution.

303. Through rates by way of Chicago to the same territory from mines in the eastern part of the group are necessarily made the same with the group rates established on other routes from the same vicinity, and their discontinuance would simply leave the market open to the product of other Illinois mines at the same transportation charge.

304. Under the exceptional circumstances requiring such through rates, shippers locally from Chicago of Ohio and Pennsylvania coal can not justly insist upon rates no higher than the division of such through rate which appertains to the lines running northwest from that city, the circumstances under which the through rate is made being such that it can not be differently adjusted.

305. The question of relative injustice must be viewed upon broader grounds than a mere balancing of one rate against another. A reduction which will throw into confusion an adjustment of rates over a large section of country which are not claimed to be unreasonable of themselves, should not be required without a clear right thereto exists under some direct provision of the law.

306. A reduction of the rates on local shipments from Chicago to the proportion received by the northwestern lines upon the division of the through rates aforesaid would involve either a general reduction from the entire group under the short-haul clause of the law or an abandonment by defendant of the through rates in question, neither of which would benefit complainant, while both would do great injury to all other interests. Under such circumstances the preference is not undue nor is the advantage complained of unreasonable.

The Chamber of Commerce of the City of Milwaukee v. The Flint and Pere Marquette Railroad Company and the Detroit, Grand Haven and Milwaukee Railway Company. (2 I. C. C. Rep., 553.)

307. The rate of 30½ cents per 100 pounds on wheat, flour, and mill stuffs from Minneapolis *via* Milwaukee to New York and common billing points, established by the defendants and their connecting lines February 1, 1888, was a through rate.
308. The percentage, amounting to 25 cents per 100 pounds, received by the defendants and their connecting lines east of Milwaukee as their proportion of this through rate on shipments from Minneapolis and points west of Milwaukee, and between Milwaukee and Minneapolis, while the defendants charge 25½ cents per 100 pounds on the same class of freight originating at Milwaukee and transported over their lines and connecting lines to eastern points, was not an unjust discrimination against Milwaukee, nor did it injure the business of Milwaukee, nor was it a violation of the act to regulate commerce, approved February 4, 1887.
309. A rate is none the less a through rate when freight is shipped upon a through bill of lading from the point of origin to destination, accompanied by a way bill showing the route over which it is to pass, with the percentages of all the other lines set forth on the way bill, because the initial carrier charges its local rate as part of the total rate and the remaining lines charge an agreed rate made by percentages.
310. When a combined rate, evidenced by a through bill of lading from the point of origin to destination, has every substantial constituent of a through rate, it is not necessary that it should be formally "quoted" by one of the carriers to another who is engaged in the making of it in order to constitute it a through rate. Names are nothing in such a transaction; the law looks at the elements and substance of the transaction itself.
311. Through rates, as such, discussed and defined.
312. Through rates, like any other agreements that parties competent to contract may make, admit of very great variety in the forms they assume; and such rates, when reasonable and fairly adjusted, in their relations to local business, are greatly favored in the law because they furnish cheapened rates and greater facilities to the public, while at the same time they give increased employment and earnings to a larger number of carriers.
313. The difference between proportions of through rates along the same lines should be fairly reasonable in amount and properly guarded in their application, and not such as to injure or suppress business in one locality in order that it may be stimulated and built up in another.
314. Where a rate is in itself a through rate and made up of percentages to an intermediate point on a long haul, the circumstances and conditions of transportation must be rarely exceptional indeed to be of such controlling force as to warrant any considerable excess of such a rate in amount over a percentage of a through rate for an equal distance along the same line by way of the same point to a more distant point.
315. Milling in transit rates as part of a through rate in this case discussed.

Milton L. Myers, survivor of Hostetter & Company, v. The Pennsylvania Company, operating The Pittsburgh, Fort Wayne and Chicago Railway, The Baltimore and Ohio Railroad Company, The Lake Shore and Michigan Southern Railway Company, The Pittsburgh and Lake Erie Railroad Company, The New York Central and Hudson River Railroad Company, The Allegheny Valley Railroad Company, and The Pennsylvania Railroad Company. (2 I. C. C. Rep., 573.)

316. Hostetter's Stomach Bitters, prior to the act to regulate commerce, were shipped under the Middle and Western States Classification in the third class in less than carloads, and in the fourth class in carloads.
317. Bitters generally in that classification were classed in first class in less than carloads, but were also put in the third class, with the specification "Manufacturer's account, released by shipper," under which these bitters were shipped. No other article, except wine, was so classified and shipped.
318. After the act to regulate commerce the Official Trunk-Line Classification superseded the former classification and bitters were classified in first class, with other liquids similar in character, marketable value, and manner of shipment. The class rates under the Official Classification are lower than under the one previously used.
319. In October, 1888, by a change in the Official Classification, bitters in carloads were placed in third class.
320. On complaint for unjust and unreasonable rates: *Held*, That a former special and preferred rate is not a fair test of the reasonableness of a present rate.

321. The proper classification of an article is to be judged relatively by the classification of other articles similar in character, equality, and conditions of transportation.
322. The rate on bitters as at present classified, compared with analogous articles, is not so unreasonable as to demand a change of the classification of that particular article. The propriety and extent of a change can more appropriately be acted upon in connection with other articles, in a general revision of the classification.

L. Lippman & Co. v. The Illinois Central Railroad Company. (2 I. C. C. Rep., 584.)

323. A railroad company is under special obligation to give reasonable rates for its local business, but there are many influences which may affect through rates while not bearing upon local rates at all, or, if at all, in less degree.
324. Through rates are not necessarily illegal which when divided between carriers give them less than their local rates, provided that the through rate itself is not less than some one of the locals, or unjustly discriminating against individuals or localities, or so low as to burden other business with part of the cost of the business upon which it is imposed.

In the matter of the Petition of the Produce Exchange of Toledo. (2 I. C. C. Rep., 588.)

325. After a complaint upon elaborate pleadings and proofs has been heard and determined by the Commission, and no party to the proceeding has applied for a rehearing, an application for a rehearing made by others who were not parties to the proceeding will not be granted.
326. In such a case, if upon a new or different complaint it should appear that any conclusion of the Commission in the case so decided has been erroneous, the Commission would feel it to be a duty to correct such conclusion.
327. Where relative rates are the same at points not far distant from each other on the same system of railroads, it is the practice of the Commission in determining the reasonableness of rates upon a complaint made at one of these points to consider the bearings and relative equality of rates at all of the points so situated before ordering a change at any one of them in order to avoid preference to one and prejudice to another.

The Michigan Congress-Water Company v. The Chicago and Grand Trunk Railway Company. (2 I. C. C. Rep., 594.)

328. Where a complaint is made against the reasonableness of through rates agreed upon by several connecting lines, it is necessary to make all such connecting lines parties defendant. Citing and affirming the rule laid down on this subject in 1 I. C. C. Rep., 199; 1 I. C. C. Rep., 237; 1 I. C. C. Rep., 490.
329. Unauthorized declarations of a depot agent, implying that a tank car which has just returned from one long journey is in a safe condition to be loaded and started on another long run, are not binding upon the railway company.
330. After a freight tank car has just returned from one long journey it is the duty of the carrier, before permitting it to start out loaded on another distant run, in which the lives and safety of brakemen, trainmen, and the property of the shipper will be involved, to have such car carefully inspected by a competent inspector, in order to ascertain whether it is in a safe condition for such service.
331. On all the facts in this case, *held* (1) that the tank car of complainant when loaded was not in a safe condition to be transported by the defendant in April, 1888, and that it was not the duty of defendant to transport it at that time; but it was the duty of complainant to have it repaired before insisting upon its being transported by the defendant; (2) that neither the defendant nor any of its officers and agents have been engaged, as complained, in combinations with connecting lines, or other parties, to prevent complainant from obtaining reasonable rates and facilities for the transportation of its mineral water, or to give other mineral waters a preference in rates and facilities over those accorded to complainant; (3) that defendant's officials and agents have not acted in a malevolent spirit toward complainant in throwing obstructions in the way of its transporting mineral water over defendant's line and its connecting lines.

T. M. C. Logan, F. D. Babcock, and E. M. Parsons, executive committee of the Northwestern Iowa Grain and Stock Shippers' Association, v. Chicago and North-Western Railway Company. (2 I. C. C. Rep., 604.)

332. The service may be rendered under such dissimilar circumstances as to make it lawful to charge more for the same distance on one line or branch than on another line or branch of the same road.

333. A departure from the rule of equal mileage rates as applied to the several branches of the road is not conclusive that such rates are unlawful, but the burden is on the company making such departure to show its rates to be reasonable when disputed.
334. A railroad company while long maintaining a rate without the presence of competition on other than equal terms is making evidence that such rate is not too low.
335. The Chicago and North-Western Railway Company has two routes or lines between Chicago and Sioux City, formed by its main line and different branch lines, and a greater charge for a shorter than for a longer distance in the same direction, the shorter being included in the longer distance, on either of said routes or lines, is unlawful under the fourth section of the act to regulate commerce.
336. Two of the south branch lines of said railway company are crossed by the main line of the Chicago, Milwaukee and St. Paul Railway Company. From points on these branch lines the North-Western Company comes in competition with the St. Paul Company, from its main-line points. *Held*, That the charges on these branches do not establish a standard of reasonable rates for like distances from points on the north branch of the same company, where no such competition exists.
337. Said railway company had in force from Nebraska points to Turner, Ill., a tariff sheet directing corn destined to the seaboard to be billed from such Nebraska points to Turner at different rates when destined to different seaboard points. The corn was carried from Nebraska to Chicago, where the rebilling and transferring were done. No shipments could be made under this tariff from Iowa points. *Held*, That as billed, the shipment was to Turner; that by billing at different rates to Turner an illegal preference was given, and that Iowa grain growers were subjected to unreasonable disadvantage in marketing corn.

The Imperial Coal Company and Andrews, Hitchcock & Company v. The Pittsburgh and Lake Erie Railroad Company, and The New York, Lake Erie and Western Railroad Company, as lessee of the New York, Pennsylvania and Ohio Railroad. (2 I. C. C. Rep., 618.)

338. A group rate for a particular district upon a commodity for which a large demand exists, and intended to place producers in the district upon an equality among themselves and with producers of the same commodity from other districts, all competing in a common market, is not unlawful merely on account of differences in the geographical location of different producers and their respective distances from the market.
339. Actual undue prejudice or damage of which the rate is the cause must result to the more favorably situated producers to render a group rate unlawful.
340. In determining the question of undue prejudice from a rate distance is only one of the factors, and other material facts, such as character and quality of the commodity, cost of production, extent and nature of the competition in the business itself and by other transportation lines, and the interests of the public in the use of the commodity and its market cost, are to be considered.
341. A rate of 90 cents a ton on coal shipped to Lake Erie for a district covering a radius of 40 miles around Pittsburg, Pa., embracing a large number of mines of substantially like cost of production and like character of coal, has prevailed since the act to regulate commerce took effect. The coal from the different mines is in competition at Lake Erie, and is transported over several different and competing lines of railroad, all carrying at the same rate. The coal from the district is also in competition with similar coal from the Hocking Valley district in Ohio, and from other districts. The complainants' mines are near the center of the district, and some mines in competition with them are at a greater distance from the lake, varying from 20 miles to 43 miles. On all the facts of the case, *held* that the rate in itself not being unreasonable it does not appear that it subjects the complainants to undue prejudice, or that it gives an unreasonable preference to the more distant mines.
342. The question of a greater charge in the aggregate for a shorter than for a longer distance over the same line in the same direction is not to be determined by the proportion allotted to different roads on the line, but by the rate as an entirety.

In the matter of Joint Water and Rail Lines. (2 I. C. C. Rep., 645.)

343. The act to regulate commerce does not empower the Commission to compel railroad companies to enter into joint arrangements with carriers by water for through carriage at through rates.

344. The fact that a railroad company makes such joint arrangements for one of its branch roads will not charge it with unjust discrimination for refusing to make identical arrangements on other parts of its system when it appears that from such other parts of its system it actually makes through arrangements by a more direct route and at the same rates which are presumptive of equal convenience to shippers.

In the matter of Passenger Tariffs. (2 I. C. C. Rep., 649.)

345. Methods generally adopted by carriers in the preparation and publication of rate sheets, if in substantial compliance with the law, and sufficient for the purposes of public information, while not necessarily to be accepted by the Commission as a standard, may be acquiesced in until a better mode can be substituted.
346. When there is no joint rate in effect from a station on the line of one carrier to a station on another carrier's line to which a ticket is applied for, it is competent to name a through rate made up of the sums of rates prevailing on the several roads or parts of roads made use of in the journey; using for such a through rate local rates where there are no joint rates in effect, and joint rates in combination with locals where they are in effect for any part of the distance. When no joint rates are announced, it is understood that the local rates are employed in arriving at the through rate.
347. New individual or joint passenger tariffs must be posted at stations to which they apply, and tickets can legally be sold on combinations of initial or terminal locals therewith.
348. Mileage, excursion, or commutation passenger tickets must be offered impartially to all who accept the conditions on which they are issued, and the rates at which they are sold must be published. The general requirements of the act to regulate commerce as amended are as applicable to these classes of tickets as to any others.
349. Party rates, and passenger carload rates, lower than contemporaneous rates for single passengers, constitute discrimination between persons entitled to transportation at equal rates, and are therefore illegal.

The Little Rock and Memphis Railroad Company v. The East Tennessee, Virginia and Georgia Railroad Company, and The St. Louis, Iron Mountain and Southern Railway Company. (3 I. C. C. Rep., 1.)

350. English legislation and the procedure thereunder, in respect to applications by carriers to be admitted to through routes and to participate in through rates, stated; and principles then applied explained.
351. The act to regulate commerce was probably intended to effect similar results, but in its present form and in the absence of the necessary machinery it is not adequate to afford the relief prayed in the petition.
352. Recommendations of Second Annual Report for amendment of section 3 renewed. *Kentucky and Indiana Bridge Company v. Louisville and Nashville Railroad Company* (2 I. C. C. Rep., 162), referred to and explained.

In the matter of the Tariffs and Classifications of the Atlanta and West Point Railroad Company and other companies. (3 I. C. C. Rep., 19.)

353. Investigation by the Commission, on its own motion, concerning course pursued by certain carriers in respect to compliance with the provisions of the act to regulate commerce.
354. Results as ascertained stated, and recommendations made for further advances in the direction of conformity to the law.
355. Short-haul clause, principles giving application of as heretofore announced by Commission, and again affirmed and applied.
356. Form of tariffs and classifications in use criticised and requirements of statute stated in respect thereto.

Rice, Robinson and Witherop v. The Western New York and Pennsylvania Railroad Company. (3 I. C. C. Rep., 87.)

357. After a case has been decided, a petition to open it for further testimony and a rehearing should be verified, and should indicate the nature of the new testimony and its purpose.
358. When a question of general public interest is involved, the Commission, in its own discretion, and in furtherance of justice, may open a case to give parties the benefit of a more extended investigation of the same subject-matter in other pending cases.

In the matter of the Investigation of the Acts and Doings of the Grand Trunk Railway Company of Canada in the Transportation of Traffic from the United States into Canada. (3 I. C. C. Rep., 89.)

359. The provisions of the act to regulate commerce apply to foreign as well as domestic common carriers engaged in the transportation of passengers or

property, for a continuous carriage or shipment, from a place in the United States to a place in an adjacent foreign country.

360. The common carriers engaged in such transportation are subject to the provisions of the act in respect to the printing of schedules of rates, fares, and charges for the traffic they carry, the posting and filing with the Interstate Commerce Commission of copies of such schedules, the notice of advances and reductions, and the maintenance of the rates, fares, and charges established and published and in force at the time.
361. Such common carriers are also subject to the provisions of the act in respect to joint tariffs of rates, fares, and charges for continuous lines or routes.
362. The carriage of freights can not be prevented from being treated as one continuous carriage from the place of shipment to the place of destination by any means or devices intended to evade any of the provisions of the act.
363. Under the provisions of the act the Grand Trunk Railway of Canada is required to print, post, and file its schedules of rates and charges for the transportation of property from points in the United States to points in Canada, and can not lawfully charge, demand, collect, or receive from any person or persons a greater or less compensation therefor, or for any services in connection therewith, than is specified in such published schedule as may at the time be in force.
364. Upon an investigation by the Commission it appeared that the Grand Trunk Railway Company of Canada transports coal and coke under a schedule specifying a total rate from Buffalo, Black Rock, and Suspension Bridge, in the United States, to Hamilton, Dundas, and several other points in Canada, and that the published tariff rate for such transportation from points named to Hamilton and Dundas is \$1 a ton, but that it accepts a reduced charge or allows a rebate of 25 cents a ton in favor of certain consignees at Hamilton, Dundas, and other points in Canada.
365. *Held*, That the reduced charge accepted, or rebate allowed, is in violation of the act to regulate commerce and unlawful.
366. The Interstate Commerce Commission has authority to institute investigations and to deal with violations of the law independently of a formal complaint or of direct damage to a complainant.

William H. Heard *v.* The Georgia Railroad Company. (3 I. C. C. Rep., '11.)

367. It is a lawful duty that a carrier, like the defendant, owes to the traveling public, in carrying out its rule of furnishing separate cars to white and colored passengers on its line engaged in interstate travel, to make them equal in comforts, accommodation, and equipment, without any discrimination.
368. It is a lawful duty which a carrier, like the defendant, owes to the traveling public, engaged in interstate travel over its line, to afford the equal protection of the law alike to all such passengers, without regard to race, color, or sex, against undue prejudice and disadvantage from disorderly conduct on the part of other passengers or persons.
369. On the facts in this proceeding, *held*, that the defendant violated the law in each of the foregoing respects as against petitioner.

Putnam P. Bishop *v.* H. R. Duval, receiver of the Florida Railway and Navigation Company. (3 I. C. C. Rep., 128.)

James A. Harris *v.* H. R. Duval, receiver of the Florida Railway and Navigation Company, and other carriers.

370. When, pending a proceeding begun to test the reasonableness of rates, the rates are reduced and made satisfactory to the complainants the Commission will not consider the question whether the rates before reduction were or were not excessive; that question having by the reduction made become purely abstract and speculative.
371. The question whether rates paid ought to be refunded having been presented to a judicial tribunal, where it is now pending, the Commission will not take cognizance of it.

Milton L. Myers, survivor of Hostetter & Co., *v.* The Pennsylvania Company, operating the Pittsburgh, Fort Wayne and Chicago Railway; the Baltimore and Ohio Railroad Company; The Lake Shore and Michigan Southern Railway Company; The Pittsburgh and Lake Erie Railroad Company; The New York Central and Hudson River Railroad Company; The Allegheny Valley Railroad Company; and the Pennsylvania Railroad Company. (3 I. C. C. Rep., 130.)

372. A petition to reopen a case that has been decided, and for a rehearing, should show *prima facie* that some material testimony has been overlooked or misapprehended, or some error in the findings of fact or conclusions of law.
373. When the application is insufficient in these respects, and only asks for a rediscussion of the law and facts already considered, with no offer of new evidence that can change the result, the application will be denied.

The New York Produce Exchange *v.* The New York Central and Hudson River Railroad Company; The Michigan Central Railroad Company; The Lake Shore and Michigan Southern Railway Company; The Chicago and Grand Trunk Railway Company; The Great Western Railway Company of Canada; The New York, Lake Erie and Western Railroad Company; The Chicago and Atlantic Railway Company; The New York, Pennsylvania and Ohio Railroad Company; The New York, Chicago and St. Louis Railroad Company; The West Shore Railroad Company; The Delaware, Lackawanna and Western Railroad Company; The Grand Trunk Railway Company of Canada; The Pittsburgh, Fort Wayne and Chicago Railway Company; The Pennsylvania Railroad Company; The Pittsburgh, Cincinnati and St. Louis Railway Company; The Wabash Western Railway Company; The Baltimore and Ohio Railroad Company; The Philadelphia and Reading Railroad Company, and the Central Railroad Company of New Jersey. (3 I. C. C. Rep., 137.)

374. From November 4, 1887, to February 20, 1888, the Trunk Lines, so called, under resolutions of their Association, made through export rates of which the inland proportion accepted by them was, at the port of New York, often 10 cents or more per hundred pounds less on like traffic than the published tariff rates charged at the same time to the same port. *Held*, That the discrepancy between the proportion of the through rate accepted and the established tariffs for seaboard consignments for the same inland carriage is not shown to have been justified by any circumstances tending to show that it was just or proper, and that it must therefore be deemed an unjust and unlawful discrimination as against the transportation terminating at that port.

375. It is essential that any method for making rates should be practicable, and not afford a cover for discrimination and injustice. The only practicable mode yet devised for making through export rates, as appears by past experience, is to add to the established inland rates from the interior to the seaboard the current ocean rates.

376. Under the amendments of March 2, 1889, to the statute requiring ten days' previous notice of advances and three days' previous notice of reductions in rates, they can not be varied from day to day, or oftener, to meet fluctuations in ocean rates.

377. Whenever a tariff is established for merchandise billed or intended for export by sea, and ocean rates are not specified, either because of fluctuations or for any other reason, so that only the charge for inland transportation is definitely fixed, the tariff as filed and made public should show the rate charged by the inland carrier or carriers to the point of export, including all terminal charges and expenses, and should also show in what manner the through rate to the point of ultimate destination is to be determined, whether by addition of the ocean rate from time to time prevailing, or how otherwise.

J. P. Sanger *v.* The Southern Pacific Company, lessee of the Central Pacific Railroad, and the Union Pacific Railway Company. (3 I. C. C. Rep., 134.)

378. A misapprehension under which a party has paid for one journey in two sections, whereby the cost of the transportation has been made more than it would have been had a through ticket been purchased, may lawfully be corrected by return of the excess, though the carriers were without fault and only charged for each portion of the journey the regular rates.

George Rice *v.* The Cincinnati, Washington and Baltimore Railroad Company, The Cincinnati, Indianapolis, St. Louis and Chicago Railway Company, The Chicago, Rock Island and Pacific Railway Company, The Union Pacific Railway Company, and The Central Pacific Railroad Company. (3 I. C. C. Rep., 186.)

George Rice *v.* The Cincinnati, Washington and Baltimore Railroad Company, The Ohio and Mississippi Railway Company, The St. Louis and San Francisco Railway Company, The Atchison, Topeka and Santa Fe Railroad Company, The Atlantic and Pacific Railroad Company, and the Southern Pacific Company.

George Rice *v.* The Louisville and Nashville Railroad Company.

In the matter of the Application of the Petitioner for Subpenas *duces tecum*.

379. In laying down rules upon the subject of what an application shall contain for the compulsory production of books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation, the Commission is governed by the provisions of the act to regulate commerce and the objects and purposes of this statute, but in connection with these will also consider the practice in the courts of the United States, as well as the rules prescribed by Federal statutes in proceedings which seem to be most nearly analogous to proceedings in which such application to the Commission is made.

380. In proceedings between parties, when such an application is made to the Commission, to compel parties who are not engaged as carriers in interstate commerce, or others who are strangers to the proceeding, to produce books, papers, and documents, the application should be in writing, addressed to the Commission, and should specify, as nearly as may be, the books, papers, or documents for the production of which process is desired, and be accompanied by an affidavit that the books, papers, or documents described are in the possession of the witness or under his control, and should set forth facts which make a *prima facie* case that these contain evidence that is material and necessary to the party seeking their production in the pending proceeding; and in such a case the *prima facie* showing that what is required to be produced will be legal evidence for the party demanding it ought to be very clear and full.
381. Where the application is made to compel one who is a party to the proceeding and who is a carrier engaged in interstate commerce to produce its books for the purposes of evidence in a pending proceeding, it is sufficient for the application to indicate in writing in a general way what books of the carrier should be produced, and that there is reason to believe, and that the applicant does believe, that in the course of the hearing they will become of service, on account of the light they will throw upon the questions in controversy in the proceeding and as an evidence of good faith; in making the application, the applicant should make an affidavit, as part of the application, that such application is made in good faith, and not for the purpose of vexing and harassing the defendant; and upon such a showing, as a general rule, the process should issue, unless the number of books called for should be so large, or from other exceptional circumstances the Commission should order the testimony to be taken at such place as would avoid oppression in producing the books at a far-distant hearing, and expedite the progress of the investigation.
382. The difference that exists in what should be a *prima facie* showing for compulsory process for the production of books, papers, and documents as between parties not engaged as carriers in interstate commerce, or strangers to the proceeding, on the one hand, and on the other hand, carriers who are engaged in interstate commerce, is the one that is very manifest. The books of carriers engaged in interstate commerce, whether made up from shipping tickets, waybills, expense bills, or otherwise, are supposed to give the exact particulars of the consignment, showing the weight, rate, and amount of charges to be paid to the company's agent, and are put in this enduring form at the time of the consignment as part of the transaction upon rates that the law requires to be open and public, and thus they give a history of the details of the transaction and are in the nature of semipublic records. Shippers, consignees, and even the public may well have an interest, under certain circumstances, in the evidence these records afford as to rates, charges, facilities furnished, and the general movement of freight. The books of strangers to the proceeding, and of parties not engaged as carriers in interstate commerce, do not necessarily occupy any such relation to these transactions, though there may possibly be such a showing as would make them material and competent evidence in proceedings in which these transactions come into controversy.
383. There are several modes of procedure by which the inconvenience to the defendant carriers of producing books, and the delay and labor of going over their entries, might be avoided by petitioner. For example: If one or more witnesses should be subpoenaed from the different companies proceeded against, and a notice should be served with the subpoena, requiring the witnesses to furnish the published rates and tariffs of such company, for a specified period, and also requiring them to furnish statements of the actual charges made and car facilities furnished during such period, to the Standard Oil Trust and the others named in the application, if different from the published tariffs and schedules, it would probably be sufficient for all the purposes of these proceedings; or if the parties would take depositions by consent in advance of the hearing it would answer the same purpose.
384. In proceedings like these it is enough to show the rates actually charged, if there are or have been any such, to certain shippers or consignees different from the published tariff rates, or the preferential facilities, if any such, furnished by the defendants to some shippers or consignees and not to others, or the comparative rates on the different commodities named in the complaints, and from and to designated points. Innumerable shipments, with all their minuteness of detail over the various lines that were made for many years before the act to regulate commerce took effect, as well as since that date, and the names of the consignors and consignees at so many different

points through these long periods of time, seem to be immaterial. It appears to be sufficient for all the purposes of these cases to show the rates published, the rates actually charged, and the facilities furnished from and to designated points since the act to regulate commerce went into effect, and for whatever light these may throw upon the question of the reasonableness and justness of the rates, if any, and the fairness of the facilities afforded by way of comparison; what these were for a reasonable time, for example, for a period of twelve months before the act to regulate commerce went into effect.

385. The books of the defendant carriers, as to rates charged, facilities furnished, and general movements of freight, being in the nature of semipublic records, to any extent that they can fairly and justly save time, labor, or expense to complainant, or to their companies, by giving to him, in response to any calls he may make, statements of facts shown by their books, records, or files which may probably have importance on the hearing, the officers and agents of the defendant carriers, under the direction of defendants, ought to give such statements, and ought to do so as promptly as may be found reasonably practicable. Much unnecessary controversy, inconvenience, and delay might well be avoided in the first instance, as well as in subsequent stages of proceedings, if carriers would exhibit, without technical objection, what their books show in reference to a transaction in question to anyone who calls for the information in good faith, believing, though perhaps erroneously, that it is, or may be, important to his interests, and when the application is seasonably and properly made, with a due regard for the convenience of the carriers' agents and officers; and the instances are numerous in which it would put an end to the controversy, and in many others that the party would not then trouble the carrier for the production of the books.

386. As the application in these cases does not conform to the rules herein stated in reference to making a *prima facie* showing for the compulsory production of the books, papers, and documents, either as against the defendant carriers or those who are strangers to these proceedings, the relief it seeks can not now be granted, and for the present must be denied; but this does not preclude the petitioner from renewing his application, provided, in doing so, he conforms to the rules indicated.

The Lincoln Board of Trade v. The Union Pacific Railway Company and The Southern Pacific Company, and five other cases. (3 I. C. C. Rep., 221.)

387. The relief claimed having been conceded, no opinion of the Commission is filed.

The Pennsylvania Company, operating the Jeffersonville, Madison and Indianapolis Railroad, v. The Louisville, New Albany and Chicago Railway Company. (3 I. C. C. Rep., 223.)

The Chicago, St. Louis and Pittsburg Railroad Company v. The Cleveland, Cincinnati, Chicago and St. Louis Railway Company.

388. The Commission does not give opinions on abstract questions.

389. Where a case involving the reasonableness of rates has been disposed of by the carrier assenting to the rates demanded, no opinion will be expressed on the rates which have been abandoned, even though the parties request it.

390. Such a course is particularly advisable and proper when it is apparent that other parties than the one complained of are interested in the question, and have not had the opportunity to be heard upon it.

Henry McMorran and Edmund B. Harrington v. The Grand Trunk Railway Company of Canada and The Chicago and Grand Trunk Railway Company. (3 I. C. C. Rep., 252.)

391. Through rates are not required to be made on a mileage basis, nor local rates to correspond with the divisions of a joint through rate over the same line; mileage is usually an element of importance, and due regard to distance proportions should be observed in connection with the other considerations that are material in fixing transportation charges.

392. When rates on the line of a carrier are on their face disproportionate or relatively unequal, the burden is on the carrier to justify them when challenged.

393. Grain and grain products classified alike are presumptively entitled to equal rates, and if a difference is made by a carrier it assumes the burden of sustaining it by satisfactory evidence.

394. Upon complaint against the Grand Trunk Railway of Canada for alleged unreasonableness of a rate of 8 cents a hundred pounds on grain and 10 cents a hundred pounds on grain products from Port Huron to Buffalo, as

compared with a through rate of 15 cents a hundred pounds from Chicago to Buffalo over the line formed by that road and the Chicago and Grand Trunk road, *held*, that though the local rate from Port Huron to Buffalo might be regarded as disproportionate on the basis of distance alone, other considerations are involved, and in view of the terminal and ferry expenses at Port Huron, the Niagara Bridge charges, and the Buffalo terminal expenses, all of which are borne by the Grand Trunk Railway of Canada alone upon business originating at Port Huron, the complaint against the 8-cent rate on grain is not sustained; but no good reason having been shown for a higher rate on grain products, that portion of the complaint is sustained, and the products ordered to be carried at the same rate as grain.

Abiel Leonard v. The Chicago and Alton Railroad Company, and Logan B. Chapelle v. The Same Company. (3 I. C. C. Rep., 241.)

395. A practice had existed on the part of certain carriers of live cattle to make a carload rate irrespective of weight, leaving the shipper to load into the car as many cattle as he pleased and was able to put into it. The carriers substituted for this practice the rule that while naming a car-lot rate they prescribed a minimum weight for a carload, and then charged by the hundred pounds in proportion to the car-lot rate for any excess over the minimum. *Held*, That this rule was not unlawful.

396. *Prima facie* the new rule is more just and reasonable than the practice it supplanted, since the charge is more in proportion to the service rendered.

397. The fact that some difficulties are found to exist in the prompt and accurate weighing of the cattle is not a reason for abolishing the new practice, but rather for improving and perfecting it.

398. The fact that by the action of certain State commissions a car is permitted to be loaded by the shipper at discretion without the car-lot rate being affected thereby is not a reason for adopting the like rule in interstate traffic if that course is found not to be most just and politic.

399. The grant to the Federal Government of the power to regulate interstate commerce is full and complete, and can not be narrowed or encroached upon by State authority, either directly or indirectly. The fact, therefore, that one or more States have adopted a particular regulation is not a reason for applying it to interstate commerce if in itself it appears to be objectionable. State action will always be treated with the highest deference and respect, but can not be allowed to control in matters within the Federal jurisdiction.

James & Abbott v. The East Tennessee, Virginia and Georgia Railway Company, The Norfolk and Western Railroad Company, The Shenandoah Valley Railroad Company, The Cumberland Valley Railroad Company, The Pennsylvania Railroad Company, The New York, New Haven and Hartford Railroad Company, and the New York and New England Railway Company. (3 I. C. C. Rep., 225.)

400. The presence of combined rail and water competition at a longer-distance point does not justify a greater charge for a shorter distance while the carrier maintains the shorter-distance rate where such competition is of greater force and more controlling than at the longer-distance point.

401. Nor does the fact that the freight is lumber, which has paid a local rate over the roads of the defendants or of other railroad companies to the longer-distance point, justify such greater charge for a shorter distance.

402. Nor is such greater charge justified by the fact that the lumber business of the roads of a connecting line or any of them was done in cars which carried machinery to the longer-distance point when profitable return loads were not always to be had.

403. Nor does a difference in the bulk and value of lumber justify such greater charge when the carriers in their published rate sheets put the lumber in the same class and at the same rate.

404. Distance is not always the controlling element in determining what is a reasonable rate, but there is ordinarily no better measure of railroad service in carrying goods than the distance they are carried.

405. And where the rate of freight charges over one line, on similar freight carried from neighboring territory to the same market, is considerably greater than over other lines for distances as long or longer, such greater rate is held to be excessive and should be reduced.

The Oregon Short Line Railway Company v. The Northern Pacific Railroad Company. (3 I. C. C. Rep., 264.)

406. Under the Rules of Practice issued by this Commission a replication to an answer is not required or allowed.

William L. Rawson v. The Newport News and Mississippi Valley Company, The Baltimore and Ohio Railroad Company, and L. Boyer's Sons. (3 I. C. C. Rep., 266.)

407. Where a tariff complained of was abandoned by the carriers for a long period of time before the complaint was made and shortly after the tariff was put in force, the Commission will not make an order requiring the carriers to cease and desist from enforcing such tariff, because such an order would be vain and useless.

408. The amendment of March 2, 1889, expressly provides that it shall have no application to pending proceedings, and as this proceeding was pending at the time no reparation can be awarded, and the remedy of the petitioner is in the courts.

Frederick A. White v. The Michigan Central Railroad Company and the Lake Shore and Michigan Southern Railway Company. (3 I. C. C. Rep., 281.)

409. When a complaint charged that the respondent railroad companies, which were common carriers subject to the act to regulate commerce, were accustomed to make deductions of from 5 to 10 pounds of wheat per load from the true weight when delivered by the farmer to the buyer at the elevators of the respondents, and gave receipt to the farmer for the amount as thus diminished, upon which the latter was paid by the buyer, thereby suffering a loss to the extent of such reduction, but failed to charge that the wheat was delivered for interstate transportation, or, indeed, for transportation anywhere, it was held that the complaint was insufficient in substance to show violation of the act to regulate commerce, and that the respondents were entitled to have it dismissed on their motion to that effect, but that the dismissal should be without prejudice.

410. An averment that the respondents were interstate common carriers subject to the act to regulate commerce was not of itself sufficient to warrant an inference, under a motion to dismiss a complaint for insufficiency, that wheat delivered at an elevator of the respondents was for interstate commerce.

411. This case was heard solely upon the respondents' motions to dismiss the complaint for insufficiency of its allegations to show violations of the act to regulate commerce, but the complainant having filed some depositions taken before the hearing of said motions, the Commission looked into this evidence with a view of seeing what light it shed upon the general claim of unlawful practice by the respondents, and upon the duty of the Commission to proceed against them on its own motion.

Hervey Bates and H. Bates, jr., v. The Pennsylvania Railroad Company and The Pennsylvania Company. (3 I. C. C. Rep., 435.)

412. The defense of water competition from Chicago and the lake shipping points to seaboard points east, as a justification for an otherwise unjustifiable discrimination in rate between corn and its direct products from Indianapolis to said seaboard points was held to be untenable, owing to the situation of Indianapolis as to the lakes and to the location of the territory where the corn was mainly raised that was marketed at Indianapolis, and to the other facts established in this case.

413. Where an existing classification and rate are not shown to operate injuriously to the carriers from a given point or to give undue advantage to shippers, a change is not justifiable that materially injures an important industry and a class of shippers at that point who have there built up the industry in reliance upon a continuation of the previous classification and rate first established and long maintained by the carriers themselves, without complaint from any quarter. Such change in classification and rate would subject the persons engaged in the industry and the locality and the particular traffic to unreasonable disadvantage within the prohibition of section 3 of the act to regulate commerce.

414. A discrimination between the rate on corn and its direct products from a given locality resulting from a reduction of the rate on corn below the rate on its direct products, which subjected persons in that locality engaged in the business of manufacturing corn into its direct products, and of selling the same, to unreasonable prejudice or disadvantage, and was without necessity or advantage to the carrier, or any reason founded on the character or condition of the traffic. Held to be in violation of section 3 of the act to regulate commerce, notwithstanding the new rate on corn was open to all persons equally and with equal service.

415. When carriers other than the respondents of record are committing the same violations of the act to regulate commerce as the respondents, an order may issue against the respondents and the cause be held for the purpose of bringing such other carriers into it to be proceeded against unless they comply with the order.

The Chicago, Rock Island and Pacific Railway Company v. The Chicago and Alton Railroad Company. (3 I. C. C. Rep., 450.)

416. Where property is to be transported by rail by continuous and uninterrupted carriage from one station to another, there may be sound and legal reasons for making a charge for the through transportation which is less than the sum of the locals for the transportation of like property from point to point between such stations.

417. But where property is billed from one station to another with the understanding that it is to be unloaded at an intermediate station, and that whether it shall be reloaded for further carriage will depend upon the volition of the shipper or of anyone who may have become purchaser, the case does not fall within the reasons governing rates on through transportation, and the carrier is not, at such intermediate points, entitled to have the carriage protected as a through shipment as against competitors.

The Pittsburgh, Cincinnati and St. Louis Railway Company v. The Baltimore and Ohio Railroad Company. (3 I. C. C. Rep., 465.)

418. Passenger excursion rates are required to be published according to the provisions of section 6 of the act to regulate commerce.

419. Party-rate tickets are not commutation tickets, and when party rates are lower than contemporaneous rates for single passengers they constitute discrimination and are illegal.

F. B. Thurber, M. N. Day, E. A. Doty, H. K. Miller, W. B. Timms, B. F. Shores, committee of the New York Board of Trade and Transportation, v. The New York Central and Hudson River Railroad Company, the New York, Lake Erie and Western Railroad Company, The Delaware, Lackawanna and Western Railroad Company, The Pennsylvania Railroad Company, and the Baltimore and Ohio Railroad Company. (3 I. C. C. Rep., 473.)

Thomas L. Greene, as manager of the Merchants' Freight Bureau and as representing two hundred and eighty-one retail merchants in six different States, v. The Same Defendants.

Francis H. Leggett & Co. v. The Same Defendants.

420. Classification of freight for transportation purposes is in terms recognized by the act to regulate commerce, and is therefore lawful. It is also a valuable convenience both to shippers and carriers.

421. A classification of freight designating different classes for carload quantities for transportation at a lower rate in carloads than in less than carloads is not in contravention of the act to regulate commerce. The circumstances and conditions of the transportation in respect to the work done by the carrier and the revenue earned are dissimilar, and may justify a reasonable difference in rate. The public interests are subserved by carload classifications of property that, on account of the volume transported to reach markets or supply the demands of trade throughout the country, legitimately or usually moves in such quantities.

422. Carriers are not at liberty to classify property as a basis of transportation rates and impose charges for its carriage with exclusive regard to their own interests, but they must respect the interests of those who may have occasion to employ their services, and conform their charges to the rules of relative equality and justice which the act prescribes.

423. Cost of service is an important element in fixing transportation charges and entitled to fair consideration, but is not alone controlling nor so applied in practice by carriers, and the value of the service to the property carried is an essential factor to be recognized in connection with other considerations. The public interests are not to be subordinated to those of carriers, and require proper regard for the value of the service in the apportionment of all charges upon traffic.

424. A difference in rates upon carloads and less than car loads of the same merchandise between the same points of carriage so wide as to be destructive to competition between large and small dealers, especially upon articles of general and necessary use and which, under existing conditions of trade, furnish a large volume of business to carriers, is unjust and violates the provisions and principles of the act.

425. A difference in rate for a solid carload of one kind of freight from one consignor to one consignee, and a carload quantity from the same point of shipment to the same destination consisting of like freight or freight of like character from more than one consignor to one consignee, or from one consignor to more than one consignee, is not justified by the difference in cost of handling.

426. Under the official classification, the articles known in trade as grocery articles are so classified as to discriminate unjustly in rates between carloads and less than carloads upon many articles, and a revision of the classification and rates to correct unjust differences and give these respective modes of shipment more relatively reasonable rates is necessary, and is so ordered.

George D. Sidman v. The Richmond and Danville Railroad Company. (3 I. C. C. Rep., 512.)

427. The respondent issued commutation tickets for a stated number of trips within a specified time, subject to several conditions, one of which was that the purchaser should have no claim for rebate on account of nonuse of the ticket from any cause; another, that it be presented to the conductor for cancellation of each trip when taken. A commuter had to pay the conductor full fare if he did not have his ticket, but in such cases the respondent had fallen into the habit of refunding the same on presentation of the ticket for cancellation of the trip at the proper office of the company. About three weeks prior to the complainant's purchase of his ticket, the respondent had discontinued this habit and had given notice to that effect in a new tariff sheet filed with the Interstate Commerce Commission and posted in the stations of the railroad as required by law on a change of tariff rates. *Held*, That it was not an unlawful discrimination to refuse to refund to the complainant who held such ticket, but had forgotten to take it on a certain trip and had paid his fare, notwithstanding he supposed the former custom was in vogue when he purchased his ticket.

428. It was a regulation of the respondent company, published on its public tariff schedules filed and posted as required by the act to regulate commerce, that the conductor should collect fare on trains from passengers without tickets by adding 25 cents to single-trip rates. *Held*, That it was not unjust discrimination against the complainant to exact this addition from him.

429. The complainant purchased what the respondent termed a quarterly commutation ticket on the 13th day of June, specifying the number of trips that might be taken thereon as 180, but it provided that the term should expire on the 31st day of the following August, and this was known to the complainant when he made the purchase. It was similarly stated on each one of such quarterly tickets when it was to expire, viz, at the end of the third calendar month after it was issued. *Held*, That the complainant was not entitled to recover any portion of the purchase price for the thirteen days less than a full quarter.

D. S. Alford v. The Chicago, Rock Island and Pacific Railway Company. (3 I. C. C. Rep., 519).

430. In the absence of statutory provision the rights of a railroad company under a lawful agreement for a specified use of the tracks of another railroad company are measured in respect to the track use by the terms of the contract, and the provisions of the act to regulate commerce apply to the situation created by the contract and add no authority for a different use of the tracks.

431. The duty of a railroad company operating its own road or a road that it controls to serve the local stations on its line does not apply to a company that has only a running privilege for through trains to reach points on its own line over a part of the road of another company which it does not control. In such a case the company is not required to disregard the conditions of its agreement, and does not violate the provisions of the act to regulate commerce by not receiving and discharging traffic on the tracks of the proprietary company, the sufficiency of the local service rendered by the latter not being questioned.

432. The Union Pacific Railway Company entered into a contract with the Rock Island Railway Company by which, for a valuable consideration, the latter company acquired the right to run its through trains from and to points on its own road over the road of the Union Pacific Company between Kansas City and Topeka upon the condition that no intermediate business should be done by the Rock Island Company on any part of the line used under the agreement, the Union Pacific Company retaining control of the road and of its operation, and supplying transportation accommodations for the intermediate points between Kansas City and Topeka. Upon complaint made against the Rock Island Company by a resident of Lawrence, one of the intermediate towns, for refusing to perform the ordinary duties of a common carrier in receiving and discharging traffic at his town, *held*, that the duties of the Rock Island Company were limited by its rights and powers under its contract and that it was not bound to do the local business prohibited by the agreement on the line used by its through trains.

The New Orleans Cotton Exchange *v.* The Illinois Central Railroad Company, The Michigan Central Railroad Company, The New York Central and Hudson River Railroad Company, The Boston and Albany Railroad Company, The Terre Haute and Indianapolis Railroad Company, The Pennsylvania Company, The Pennsylvania Railroad Company, The Indianapolis and St. Louis Railway Company, The Lake Shore and Michigan Southern Railway Company, The Ohio, Indiana and Western Railway Company, The Cleveland, Columbus, Cincinnati and Indianapolis Railway Company, The Chicago and Grand Trunk Railway Company, The Central Vermont Railroad Company, The Cheshire Railroad Company, The Chicago and Atlantic Railway Company, The New York, Pennsylvania and Ohio Railroad Company, and the New York, Lake Erie and Western Railroad Company. (3 I. C. C. Rep., 534.)

The New Orleans Cotton Exchange *v.* The Cincinnati, New Orleans and Texas Pacific Railway Company, The Alabama Great Southern Railway Company, The New Orleans and Northeastern Railroad Company, The Vicksburg and Meridian Railroad Company, The Vicksburg, Shreveport and Pacific Railroad Company, The Cincinnati, Hamilton and Dayton Railroad Company, The Cincinnati, Washington and Baltimore Railroad Company, The Cleveland, Columbus, Cincinnati and Indianapolis Railway Company, and the Pittsburgh, Cincinnati and St. Louis Railway Company.

433. When questions involve the reasonableness of rates upon the transportation of cotton from the Southern States by all-rail lines to Northern and Eastern mills and Atlantic ports upon through rates and a long haul, on the one hand, and, on the other, the local rates of rail carriers to a near port upon a short haul at which their service terminates, they having no associated line of steamships for a continuous carriage to ultimate destination, but the cotton so carried by them to such near port being chiefly for export, and all such rail lines penetrating the same territory and competing for the same business, running north, south, and east in opposite directions, such questions can only be disposed of on broad lines and not from narrow considerations.

434. In considering such questions thus presented, the circumstances and conditions surrounding the traffic in the respective services performed in its carriage by the rail carriers may be, and in these proceedings are, found to be substantially dissimilar and wholly unlike.

435. The proportion of one carrier in a through rate upon a long haul often is, and frequently well may be, considerably less than its local rate for hauling the same freight over its own line, without there being any unjust discrimination, unlawful preference, or extortion involved in such a method.

436. The active competition of all these rail carriers for the transportation of such freight, thereby giving them the benefit of a participation in it and lowering the rates for the benefit of the producer and consumer, and furnishing many outlets to markets, is one of the results contemplated by the act to regulate commerce, and which it was intended to promote.

437. In determining such questions, a comparison of rates based upon the doctrine that the rate per ton per mile for each of the different services so performed should be the same is not applicable, citing former decisions of the Commission upon this subject.

438. In solving questions of this character the Commission will look at and consider every fact, circumstance, and condition surrounding the traffic and of the service performed in its transportation, and if the competition of water carriers at any point is such as to be large, active, and of controlling force, the all-rail lines competing for the traffic at the same point may make rates that are reasonable and just in view of such competition, and which will enable them to participate in the carriage of the traffic, and are not obliged to go out of the business and leave it as a monopoly to water carriers.

439. The method of compressing cotton for shipment from the Southern States is one that is found to be absolutely necessary in the case of long through hauls by rail, or where the cotton is carried by coastwise steamers or by ocean vessels for export, and the difference in the rate of transportation of compressed and uncompressed cotton by rail carriers should be the actual and necessary cost of compressing.

440. Upon the facts found in these cases, the Commission will not order the rail carriers to transport cotton on flat cars instead of in box cars to New Orleans, the rate being the same on each, no injury being shown to have resulted to petitioners or to that city, or to any shipper or producer from the carriage in box cars.

441. The Commission, by adjustment, corrects the rates at Meridian and Jackson, Miss., on compressed and uncompressed cotton carried to New Orleans, respectively, over the lines of the Cincinnati, New Orleans and Texas Pacific Railway, and the Illinois Central Railroad; and holds that the complaint

as to the relative reasonableness of rates at other stations on the Illinois Central Railroad in Mississippi and Tennessee to New Orleans is not sustained.

The Worcester Excursion Car Company v. The Pennsylvania Railroad Company. (3 I. C. C. Rep., 577.)

442. Where a railroad company has by an arrangement with one car company procured a sufficient supply of sleeping and excursion cars for all the business of its lines, and refuses to haul excursion cars of other private car companies over its track for this reason, it can not be forced to do so against its objection.
443. Unless the contrary is imposed as conditions in the grant of its charter, the right to construct and operate a railroad is a franchise in its nature exclusive, not held in common with the public, though the grant of the franchise is for the public use; and the tracks of a railroad are not a common highway upon which anyone can enter and use his own cars for transportation purposes against the objection of the company owning the tracks.
444. The extraordinary liability imposed by law upon a railroad company as a common carrier for the sufficiency and safety of its passenger cars and the competency of its employes in operating such cars is a highly important protection to the public, but such company might very reasonably claim that it was not responsible for a passenger car of a private car company, or the consequences of that passenger car being transported as part of its train in causing a wreck, collision, or delay, when it had no volition in accepting or rejecting such car, but was forced to transport it by order of a civil tribunal.
445. A railroad company may acquire cars by construction, by purchase, or by contract for their use, and no one has the power to compel a railroad company to select among these several modes, or to contract with all comers.
446. The interest of the public in a matter of this kind is vitally important and lies in the direction of holding every common carrier by rail to the strictest responsibility in furnishing safe, suitable, and sufficient car equipment for the transportation of persons over its line; and the lawmaking power in enacting the act to regulate commerce has not undertaken to divide this responsibility with the carrier in the selection of its cars.
447. It would be directly at war with the rights and safety of the traveling public, as well as of the railroad company, if the line of the carrier should become an arena over which it should be compelled to make a contract of some sort with every car company or inventor of cars, and transport the public in trains of which such cars were part.

Bennet D. Mattingly v. The Pennsylvania Company. (3 I. C. C. Rep., 592.)

448. The provisions of the act to regulate commerce, construed in the light of the principles that apply to interstate commerce as enunciated by the courts of the United States, must be understood as intended to regulate all the commerce subject to the exclusive jurisdiction of Congress, including the agents and instrumentalities employed and the commodities carried, with only the limitations found in the act itself.
449. The proviso in the first section that the provisions of the act shall not apply to the transportation of passengers or property, as to the receiving, delivery, storage, or handling of property wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid; that is, by continuous carriage or shipment, only excludes from regulation the purely internal commerce of a State—that which is confined within its limits, which originates and ends in the same State.
450. When a State carrier engages in interstate commerce it becomes a national instrumentality for the purposes of such commerce and is subject to regulations prescribed by the national authority. It can not limit its obligations in that business, but must serve the business offered impartially and without preference or discrimination.
451. The national regulations prescribed are not in all respects coextensive with the power of Congress, and do not provide for ordering through routes and through rates. While it is the duty of a State carrier which engages in interstate commerce to forward traffic offered from a connecting line, there is no authority under the present act to compel the carrier to forward the traffic over a route not operated or selected by itself.

Mary O. Stone and Thomas Carten v. The Detroit, Grand Haven and Milwaukee Railway Company. (3 I. C. C. Rep., 613.)

452. Where a common carrier subject to the act to regulate commerce has established and published its schedule of rates and charges for a station on its

line, free cartage furnished by the carrier for the collection and delivery of freight carried on its road to or from such station operates as a reduction or rebate from the schedule charge and is unlawful. If free cartage at a station has the effect to reduce a rate below the charge at another station nearer the point of shipment it is unlawful as a less charge for a longer distance over the same line and in the same direction, the less being included within the greater.

453. It is not material to the question of the lawfulness of free cartage furnished at one town and not at another that the business was done in that way for many years before the act to regulate commerce was enacted. If what was done and is now done works unjust discrimination or is in any particular obnoxious to the law it is an abuse, and one that it must be assumed was intended to be corrected by the act.
454. The respondent company had a tariff schedule in effect grouping the rates from eastern points at Ionia and Grand Rapids, in Michigan, Ionia being the shorter distance, and furnished free cartage at Grand Rapids and not at Ionia.
455. Upon complaint by a firm of dealers at Ionia, *held*, that the free cartage at Grand Rapids was in effect a rebate and unlawful.

In the matter of the application of F. W. Clark, general freight and passenger agent of the Seaboard Air Line. (3 I. C. C. Rep., 649.)

456. Through rates in interstate traffic are the subject of agreement among carriers who transport the freight, and for their existence are dependent upon such agreement; and one of the features of such rates usually is that each carrier receiving the freight pays the charges upon it of the carrier delivering it.
457. Where a line of steamships, for example, plying between New York and Wilmington, N. C., make through rate from New York via Wilmington and the Carolina Central Railroad to interior points, by adding the steamer rate to the local tariff rate of the railroad to the interior points, there being no agreed through rates for such freight between the steamship and rail lines, the rail carrier, when the freight is tendered to it at Wilmington, is under no obligation to pay the rates earned by the steamer in transporting the freight from New York to Wilmington, but may decline to do so, leaving the steamship and the shipper to settle the matter of the steamship's charges before the carrier takes the freight and transports it to the interior point.

Charles Elvey, claimant, v. The Illinois Central Railroad Company, defendant. (3 I. C. C. Rep., 652.)

458. Where a carrier by its published general tariffs charges the general public from and to all points upon a large portion of its lines certain rates upon a class of freight, and at the same time publishes and puts into force a special tariff by which it charges a class of persons named, from and to the same points on its lines less than one-half in amount of the rates on the same class of freight that it charges the general public in its general tariffs, such a discrimination is unjust and is violative of the act to regulate commerce.
459. Such a discrimination can not be sustained upon the ground that the special tariff is made to aid "emigrants" in moving from one State to another where land is cheap, and to develop a sparsely settled country, and to build up business along the carrier's lines, and upon the supposition that this constitutes substantially dissimilar circumstances and conditions to what exists when similar services are rendered by the carrier for the general public.
460. A shipper to whom, as an emigrant, is accorded the rate provided by the special tariff, for example, \$60 on a carload of freight weighing 20,000 pounds, from Chicago, Ill., to Hammond, La., a distance of 863 miles, in December, 1888, and in May, 1889, makes return shipment of same freight from Hammond, La., to Chicago, Ill., under the general tariffs of the carrier, there being no other tariffs on north-bound freight between these points, and is charged therefor \$122 per car, complains of an unjust charge, *held*, that as the carrier in each instance charged only its open published rates, and no evidence is offered to show that the rates in either instance are unjust and unreasonable, and as the general tariffs of the company have long been in use and published and open to the public, and the special tariff has been but recently issued and is open to a certain special class only and is unlawful, that the general tariffs afford a better standard of what are reasonable and just rates than the special tariff, and that the shipper in such case has not been injured in paying less than one-half the amount charged the general public on the first haul and only what was charged the general public on the second haul.

461. The carrier is ordered and notified to cease and desist from further operating the special freight tariff.

J. B. Pankey v. The Richmond and Danville Railroad Company and others. (3 I. C. C. Rep., 658.)

462. When a shipper of freight gives directions to the freight agent of the initial carrier at the point of shipment the particular route by which the freight shall be shipped to destination, it is the duty of the freight agent to make such notations on the waybill as will reasonably and properly carry the freight by such particular route to destination.

463. A shipper at Troup, Tex., directs the freight agent of a carrier to bill his freight from that point to Fort Lawn, S. C., via Vicksburg, Jackson, Meridian, Birmingham, Atlanta, Augusta, and Columbia. The freight agent simply inserts in the waybill that the destination of the freight is Fort Lawn, S. C., "via Vicksburg," in consequence of which the freight at Vicksburg is billed to Atlanta and consigned to the Richmond and Danville Railroad Company, by which it is carried to Fort Lawn without being carried by way of Augusta and Columbia, and as a result of this the shipper is compelled to pay 86 cents more for the carriage than if it had been billed via Augusta as directed by the shipper, the rates by all rail lines from Vicksburg to Augusta being the same, and not the same from Vicksburg to Fort Lawn via Atlanta. *Held*, That in this the freight agent failed to do his duty; he should have made a notation on the waybill via Vicksburg and Augusta; and, upon request, the initial carrier should refund to the shipper the amount of this overcharge occasioned by the oversight of its freight agent.

464. If, on the other hand, the shipper at Troup, Tex., had given the freight agent no directions whatever as to the particular route by which the freight was to be sent forward to its destination at Fort Lawn, S. C., but had simply left it to the freight agent to select the route for him, as is frequently done by shippers in such cases, then, in that event, in selecting such route for the shipper, it would have been the duty of the freight agent to have forwarded the freight by the best and cheapest route for the shipper, so far as the freight agent knew or was informed, and to have made such notations on the waybill as would reasonably have carried it by that route, for in doing that service he would have been acting as the agent of the shipper as well as of the company.

Hulbert H. Warner v. The New York Central and Hudson River Railroad Company; The West Shore Railroad Company; The New York, Lake Erie and Western Railroad Company; The Delaware, Lackawanna and Western Railroad Company; The New York, Ontario and Western Railway Company; The Pennsylvania Railroad Company; The Baltimore and Ohio Railroad Company; The Philadelphia and Reading Railroad Company; the Lehigh Valley Railroad Company; and the Grand Trunk Railway Company of Canada, as members of the "Trunk Line Association." (4 I. C. C. Rep., 32.)

465. In arranging the classification of articles of commerce, their market value and the shippers' representations to the public as to their character may properly be taken into account in ascertaining the analogy they bear to other articles, and determining the class to which they justly belong. This is especially applicable to articles in which there is no free competition among producers and shippers. And carriers are not required to estimate the intrinsic value of freight as distinguished from its commercial value, for purposes of classification and rates.

466. The volume of traffic supplied by an article for transportation is also an element that may be considered in its classification, as a basis for rates that are reasonable both for carriers and shippers.

467. Patent medicines manufactured and shipped by the complainant are rated in the official classification as first class for less than carloads and third class for carloads. Ale, beer, and mineral water are rated as third class in less than carloads, and fifth class in carloads. The market value of the medicines is three times or more higher than that of the other articles named, and the quantity transported much less. Upon complaint made that the patent medicines should be classified the same as ale, beer, and mineral water, *held*, that in view of the much higher market value of the medicines and the smaller volume of traffic they supply, a higher classification than for the other articles named, in which there is a much greater competition among shippers, is not unreasonable, and the classification at present in force is not shown to be unjust.

Lehmann, Higginson & Co. v. The Southern Pacific Company; The Texas and Pacific Railway Company; The Missouri, Kansas and Texas Railway Company, and H. C. Cross and George A. Eddy, receivers of said company. (4 I. C. C. Rep., 1.)

Lehmann, Higginson & Co. v. The Southern Pacific Company; The Atlantic and Pacific Railroad Company; and The Atchison, Topeka and Santa Fé Railroad Company.

Lehmann, Higginson & Co. v. The Central Pacific Railroad Company; The Southern Pacific Company, lessee of The Central Pacific Railroad; The Union Pacific Railway Company; The Missouri, Kansas, and Texas Railway Company, and H. C. Cross and George A. Eddy, receivers of said company.

468. A lower charge for a longer distance for transportation of like traffic may be justified by actual water competition of controlling force, relating to traffic important in amount; and among the circumstances and conditions that may be considered in estimating the dissimilarity created by water competition are the character of the roads, the character of the traffic, the preponderance of empty cars moving in a direction in which the traffic must be taken, and the legitimacy of the competition by the rail carrier.

469. The transportation of traffic under circumstances and conditions that force a low rate for its carriage or an abandonment of the business, but which affords some revenue above the cost of its movement, and works no material injustice to other patrons of a carrier, is to be deemed legitimate competition. When, however, its carriage is at a loss, and imposes a burden on like traffic at other points, and on other traffic, it is to be deemed destructive and illegitimate competition.

470. Rates can not be arbitrarily charged in the mere discretion of a carrier. They are to be equitably adjusted with regard to the public interests as well as the carriers. Reduced rates at points where competitive influences are controlling must not fall below some revenue from the traffic in excess of cost, and higher rates at other points, required for the necessary revenue of a carrier, must be reasonable in themselves, and also relatively reasonable in comparison with the competitive rate.

471. The general rule contemplated by the statute, of equitably graduated charges on like traffic with reasonable reference to the amount of the service, is just in itself, and commonly most beneficial both to the carriers and to the public; and is only to be departed from when justified by exceptional conditions, and in such instances no longer than the conditions require.

472. Where a reduced rate is made at the terminus of a through route, under the compulsion of competition, a town not located on the line of the through route, but reached over a lateral connecting road, has a disadvantage of situation entailing some additional expense, and a reasonably higher rate to such town than the forced competitive rate to the more distant terminus of the through route is not unjust discrimination.

473. Upon complaint by dealers at Humboldt, Kans., against the respondent lines for unjust discrimination in charging a rate of 65 cents per 100 pounds on sugar transported from San Francisco to Kansas City, and 85 cents per 100 pounds upon the same commodity from San Francisco to Humboldt, more than 100 miles shorter distance, but not on the through line. *Held*, That the reduced rate to Kansas City being forced upon the carriers by competitive conditions beyond their control, and the rate to Humboldt not being unreasonable in itself, but lower than it would be except for the influence of the competitive conditions at Kansas City, and it not appearing that substantial injustice results from the higher rate at Humboldt, the lower rate to Kansas City and the higher rate to Humboldt are not deemed to be in contravention of the statute.

The Andrews Soap Company v. The Pittsburgh, Cincinnati and St. Louis Railway Company, The Cincinnati, Hamilton and Dayton Railroad Company, The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, The Cincinnati, Washington and Baltimore Railroad Company, The Chesapeake and Ohio Railway Company, The Ohio and Mississippi Railway Company, and The New York, Pennsylvania and Ohio Railroad Company. (4 I. C. C. Rep., 41.)

474. A manufacturer's description of an article to induce its purchase by the public also describes it for transportation, and carriers may accept his description for purposes of classification and rates. Carriers are not required to analyze freight to ascertain whether it is in fact inferior to the description or public representations under which it is sold, in order to give it a lower rate corresponding to its actual value.

475. Upon complaint by a manufacturer of soap, advertised and sold as toilet soap, charging unjust discrimination by classifying his product in the second class with other toilet soaps, and not in the fourth class with laundry soaps,

as he claims it should be classed, for the reason that his toilet soap is not substantially superior to soap put on the market by certain other manufacturers as laundry soap, which, under that description, is transported at a lower rate. *Held*, That the manufacturer's description of his product for commercial purposes as an article of superior grade and value warrants its classification accordingly, and carriers are not required to classify and transport it as laundry soap.

In the matter of Alleged Excessive Freight Rates and Charges on Food Products. (4 I. C. C. Rep., 48.)

476. The rate of compensation which railroad companies may lawfully receive for transportation services can not be so limited that the shipper may in all cases realize actual cost of production.
477. Charges for transportation service should have reasonable relation to cost of production and to the value of the service to the producer and shipper, but should not be so low on any as to impose a burden on other traffic.
478. In the carriage of great staples, which supply an enormous business and which in market value and actual cost of transportation are among the cheapest articles of commerce, rates yielding only moderate profit to the carrier are both necessary and justifiable, and where the carriers frequently put in force and continue for considerable periods of time tariffs of rates and charges, it is a fair inference that such rates and charges are profitable.
479. Transportation charges now made on corn and oats between the Mississippi River and Eastern cities, based on 20 cents per 100 pounds from Chicago, and 23 cents from East St. Louis to New York City, are less than 4.4 mills per ton per mile, and are not excessive.
480. The charge of 20 cents on the 100 pounds of corn and oats from the Missouri River to Chicago, and 5 cents less to the Mississippi River, is excessive, and to be reasonable should not exceed 17 cents to Chicago and 12 to the Mississippi River, east side.
481. The rates on corn and oats in force from stations in Kansas and Nebraska to the Mississippi River, east side, and to Chicago, are 2 cents in excess of reasonable rates.
482. Any transportation charges between the Mississippi River and New York City on wheat and flour based on a higher rate than 23 cents per 100 pounds from Chicago to New York City are unreasonable, and any rate on wheat and flour carried from any one place to another which is more than 15 per cent above the rate on corn and oats between the same places is unreasonable.
483. The rates of 46 cents per 100 pounds on grain and 51 cents on flour and meal between the grain region in Kansas and a large district in Texas are the same for distances shorter than 250 and longer than 800 miles, and are unreasonably high for the longer and grossly excessive and extortionate for the shorter distances.
484. In fixing reasonable rates, the requirements of operating expenses, bonded debt, fixed charges, and dividend on capital stock from the total traffic are all to be considered, but the claim that any particular rate is to be measured by these as a fixed standard, below which the rate may not lawfully be reduced, is one rightly subject to some qualifications, one of which is the obligations must be actual and in good faith.

In the matter of Alleged Excessive Freight Rates and Charges on Food Products. (Opinion on protest and motions to dismiss.) (4 I. C. C. Rep., 116.)

485. The act to regulate commerce makes it the duty of the Interstate Commerce Commission to execute and enforce the provisions of the act which require rates and charges to be reasonable. In the performance of this duty the Commission has authority to inquire into the management of the business of common carriers and to require the attendance and testimony of witnesses, the production of books and papers, tariffs, and contracts relating to any matter under investigation. To enforce its authority in this respect the Commission must invoke the aid of a court of the United States.
486. When applied to by petition the Commission must investigate matters complained of, and must, to enforce the act, make investigations and prosecute inquiries instituted on its own motion. On making any investigation, the Commission is required to make a report in writing of its recommendations, conclusions, and the finding of fact on which its conclusions are based, which recommendations and conclusions, if not complied with, can only be enforced through the courts, after trial, in accordance with established procedure. In such trial the facts found by the Commission, in conformity with the statute, have legal effect and are *prima facie* evidence; but the recommendations, conclusions, and orders of the Commission are of no binding force in the courts.

487. The Commission having entered upon inquiry and investigation as to the reasonableness of transportation rates on food products, and given notice of the time and place of taking testimony, and afforded opportunity for calling and cross-examination of witnesses. *Held*, That such proceeding was a substantial compliance with the statute.

The Manufacturers' and Jobbers' Union of Mankato, Minn., *v.* The Minneapolis and St. Louis Railway Company, The Chicago, Rock Island and Pacific Railway Company, The Kankakee and Seneca Railroad Company, and The Burlington, Cedar Rapids and Northern Railway Company. (4 I. C. C. Rep., 79.)

488. Transportation charges are required to be relatively reasonable as well as reasonable in themselves, to prevent unjust discrimination between localities. A locality not widely dissimilar in situation and in respect of the transportation service of the same carrier to other localities where lower rates are given, is entitled to rates that bear a just relation to the lower charges made.

489. Equality in charges is required under circumstances and conditions substantially similar, and relative equality is necessary in the degree of similarity.

490. When a carrier engages in transportation for which, by reason of competitive conditions or for purposes of its own, it receives low rates from some patrons and at some localities, it accepts the legal obligation to give impartial service to other patrons and at other localities that sustain similar relations to the traffic.

491. The generally recognized principle that cost of carriage is in inverse ratio to distance, and that therefore the charge per ton per mile should diminish with distance, is not a rule required by the statute, and is subject to qualifications and exceptions.

492. Upon complaint by dealers at Mankato, Minn., that rates from Chicago to Mankato should be no higher than to Waterville, Minneapolis, and points allowed like rates, *held*, that in view of the circumstances and conditions existing, a somewhat higher charge to Mankato is not unlawful, but that a difference of 20 per cent or more on the respective classes, charged when the complaint was filed, is excessive, and that a difference of 10 per cent on the several classes is reasonable and should not be exceeded.

Proctor & Gamble *v.* The Cincinnati, Hamilton and Dayton Railroad Company, The Pittsburg, Cincinnati and St. Louis Railway Company, and The Pennsylvania Railroad Company. Proctor & Gamble *v.* The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, The Lake Shore and Michigan Southern Railway Company, and The New York Central and Hudson River Railroad Company. Proctor & Gamble *v.* Orland Smith and H. C. Yergason, receivers of the Cincinnati, Washington and Baltimore Railroad Company, and The Baltimore and Ohio Railroad Company. (4 I. C. C. Rep., 87.)

493. The complainants are large manufacturers of common soap at Cincinnati, Ohio. In the official classification common soap stands in the fifth class in carload lots. The defendant railroad companies have always given it the rate of fifth-class articles, but for many years prior to May, 1889, they charged the complainants for only net weight, the gross weight being one-sixth more than net weight, but since said date they have charged for gross weight without diminishing the rate per 100 pounds. The effect of this was to charge one-sixth more for the same service than had before been charged. The charge for transportation under the net-weight practice was reasonable and just, and without complaint on the part of shippers or carriers. *Held*, That the increased charge by the device of charging for the gross weight, being one-sixth advance for the same service, was unwarranted, as it operated to make the rate unreasonable.

The San Bernardino Board of Trade *v.* The Atchison, Topeka and Santa Fé Railroad Company, The Atlantic and Pacific Railroad Company, The Burlington and Missouri River Railroad Company, The California Central Railway Company, The California Southern Railroad Company, The Chicago, Kansas and Nebraska Railway Company, The Missouri Pacific Railway Company, and The St. Louis and San Francisco Railway Company. (4 I. C. C. Rep., 104.)

494. Where complaint alleges that a greater charge, in the aggregate, for the transportation of a like kind of property, is made for shorter than for a longer distance, over the same line in the same direction, the shorter being included in the longer, and that an unlawful preference is thereby given one locality over another. *Held*, Complaint is sufficient to put the carriers on proof that the services were rendered under such dissimilar circumstances as to justify the greater charge.

495. The water competition which will justify a greater charge for a shorter distance by railroads must be actual. Possible competition will not justify such greater charge under the provisions of the fourth section of the act to regulate commerce.
496. The filing of schedules of rates with the Commission as required by statute raises no presumption as to the legality of such rates, and no omission or failure to challenge or disapprove the schedules of rates so filed can have the effect of making rates lawful which are unreasonable.
- Rice, Robinson & Witherop *v.* The Western New York and Pennsylvania Railroad Company. (4 I. C. C. Rep., 131.)
497. The acquisition and consolidation by a rail carrier under one system of management of different competing lines of road serving the same territory in the carriage of competitive traffic to the same markets can not create a right on the part of the carrier to take advantage of the consolidation of interests to deprive the public of the benefits of fair competition nor afford warrant for oppressive discrimination with a view to its own interests, such as equalizing profits from its several divisions, by making rates and charges for one division that give profitable markets to a portion of its patrons, and higher rates and charges for another division that are destructive to the pursuits of other patrons who are competitors in the same business; but its duty to the public requires that its service must be alike to all who are situated alike.
498. A carrier that employs different methods for the transportation of petroleum oil and its products, in carloads—for example, tank cars, in which the oil is carried in bulk, and box cars, in which the oil is carried in barrels—is not relieved from its duty in respect to quality of rates by the difference it makes between its patrons in the mode of carriage, but its charges for like quantities carried between like points of shipment and destination must be equal upon the commodity itself, irrespective of the mode of carriage or the tank or barrel package in which it is contained. Differences in circumstance, and conditions of transportation that are of a carrier's own creation or connivance, or that by reasonable effort on the part of a carrier might be avoided, can not justify exceptional rates.
499. A tank used in carrying oil is deemed by carriers part of the car and the rate is charged only upon the contents, while for carriage in box cars the barrels containing the oil are treated as freight and the rate is charged both for the weight of the barrel and its contents. The prevention of this prejudice to shippers in barrels requires that for purposes of rates, when a carrier uses both tank and box cars for carrying oil in carloads, the barrels shall be deemed part of the box car; and that, as in the case of transportation in tanks, the rate shall be charged only for the weight or quantity of oil carried, exclusive of the weight of the barrels, and be the same for like weight or quantity carried in tanks.
500. When a carrier engages in transporting oil in tanks and also in barrels conveyed in box cars, in carloads, and charges for the weight of the barrel as well as the oil carried by the box-car mode of transportation, but for the weight of the oil only when carried in tanks, it unjustly discriminates between shippers, and subjects the traffic to undue prejudice and disadvantages.
501. The fact that a carrier does not own tank cars, but accepts and uses such cars supplied by some of its patrons for their own traffic, is unimportant so far as rates are concerned. It is a carrier's duty to equip its road with instrumentalities of carriage suitable for the traffic it undertakes to carry, and to furnish them alike to all who have occasion for their use, and its duty to furnish equipment can not be transferred to nor required of shippers. When a carrier accepts and uses cars for transportation owned by shippers or others, in legal contemplation it adopts them as its own for purposes of rates and carriage, and neither the manner of acquiring cars, nor inability to furnish its general patrons the use of cars similar to those furnished by some shippers for their own traffic, can excuse or justify a carrier for discrimination in rates that may give one shipper advantages over another; nor can any device, such as payment of unreasonable rent for use of cars furnished by shippers, be practiced to evade the duty of equal charges for equal service.
502. The allowance by a carrier to a shipper of oil in tanks, of 42 gallons, or any number of gallons, from the actual quantity put in a tank, for alleged leakage or waste in transportation, is, in the absence of a corresponding allowance to shippers in barrels, unjust discrimination and unlawful.

503. The classification of petroleum oil and its products in carloads adopted and generally applied by carriers is the same, and the rates upon oil and its products should correspond with their classification and be alike.

The Board of Trade of the City of Chicago, complainant, *v.* The Chicago and Alton Railroad Company, The Chicago, Burlington and Quincy Railroad Company, The Chicago, Milwaukee and St. Paul Railway Company, The Chicago, Rock Island and Pacific Railway Company, The Chicago, Santa Fé and California Railway Company, The Illinois Central Railroad Company, John McNulta, receiver of the Wabash Railway Company, and the Chicago and Northwestern Railway Company, defendants; and, as intervenors, the Armour Packing Company, George Fowler & Sons, Kingan & Co. (limited), Jacob Dold Packing Company, Morrison Packing Company, Allcut Packing Company, Kansas City Packing Company, Des Moines Packing Company, William Ellsworth, Haakinson & Co., James E. Booge & Sons, Silberhorn & Co., McKeown & Sons, L. B. Doud & Co., Brittain & Co., John Morrell & Co. (limited), T. M. Sinclair & Co., William Ryan & Sons, Coey & Co., and the honorable Board of Railroad Commissioners of the State of Iowa. (4 I. C. C. Rep., 158.)

504. Certain propositions of fact established by the evidence in this proceeding may be briefly stated as showing the character of the case and also on account of the light they throw upon the conclusions reached by the Commission.

The city of Chicago is the largest pork-packing center in the country, and is also the most extensive market for live hogs and all other live stock.

Kansas City, Leavenworth, St. Joseph, Atchison, Omaha, Council Bluffs, Sioux City, Sioux Falls, Des Moines, Dubuque, Burlington, Cedar Rapids, Marshalltown, Fort Dodge, Keokuk, Grinnell, Ottumwa, and many other points that might be named in the interior of Iowa, are extensive pork-packing centers, and the hog products packed at these cities are brought into direct competition with the hog products packed at Chicago, not only in the markets of the United States, but also in all other markets of the world where hog products are consumed.

As articles of commerce the live hog and its products are in direct competition with each other at the points named and in the chief markets of this country.

From Sioux City to Mississippi River points, and from Sioux City to Eastern markets and seaboard cities via Mississippi River points, the rates are made considerably higher by the carriers on live hogs than on packing-house product. With, however, the single exception of Sioux City, rates are made the same by rail carriers on live hogs and packing house product carried from Missouri River points to Mississippi River points, or from Missouri River points to Eastern markets and seaboard cities via Mississippi River points, or from intermediate points in the States of Iowa and Missouri to Mississippi River points, or from intermediate points in Iowa and Missouri to Eastern markets and seaboard cities via Mississippi River points, or from Chicago to Eastern markets and seaboard cities and intermediate points. But upon all shipments of live hogs and packing-house product from Missouri River points to the city of Chicago, or from intermediate points in the States of Iowa and Missouri to Chicago, the rate charged is much higher on live hogs than on packing-house products.

505. The foregoing propositions of fact being true, the defendants and intervenors undertook to justify the discrimination made against Chicago upon various grounds, which, with the view of the Commission upon each, may be briefly stated.

They claim that trains carrying live hogs had the right of way over other freight trains and were run at a higher rate of speed on account of reaching the market at Chicago. But the evidence adduced did not show that this was of a nature and character that warranted the discrimination made in rates against Chicago. They also claim that there was much greater risk to the carrier in hauling live hogs than in transporting packing-house product. But the evidence showed that there was no appreciable difference in the risk of carrying the one as compared with the other.

They further claim that it is more expensive to the carrier to haul live hogs than packing-house products to Chicago. But the evidence did not sustain this ground of defense.

They claim, and the evidence showed it to be true, that the lines of railway east of the Mississippi River and east of Chicago used double-deck cars for transporting live hogs, while the railway lines west of Chicago and between Missouri River points and Mississippi River points and Chicago, with the exception of the Chicago, Milwaukee and St. Paul Railway Company and the Atchison, Topeka and Santa Fé Railway Company, used single-deck cars, and that the two exceptional roads last named had but few double-deck cars.

But this was found to constitute no justification for this discrimination in rates against Chicago.

They claim that, counting coal, cooperage, salt, and ice used in packing-house work, live hogs brought in, and packing-house product carried out, the slaughtering of hogs at the packing houses at Missouri River points and in the interior of Iowa and Missouri furnished the rail carriers more tonnage than if the live hogs were transported to Chicago and converted into packing-house product there. But this was not found to warrant the discrimination in rates made against Chicago.

By some it was insisted that as the rate on the live hogs from Missouri River points and from points in the interior of the State of Iowa, for example, to the packing house at Sioux City, added to the rate on packing-house product from the packing house at Sioux City to Chicago, is but a trifle more than the rate on the live hogs from the first point of shipment above named to Chicago, that this equalized the rates relatively on live hogs and hog product. But the Commission finds that there is no element of justice or fairness in making or computing rates upon any such basis as this, and that it constitutes no ground whatever for these discriminating rates against Chicago.

The intervenors insist that there is a considerable shrinkage of the live hogs in being transported in cars long distances, and further claim that the meat is in better condition when converted into product near where the hogs are reared and fresh than if this is done after the hogs are transported a long distance, and that therefore public considerations demand that the live hogs should be converted into product near where they are grown. But the Commission finds that while there is a temporary shrinkage of from 3 to 5 per cent in the weight of a hog from Missouri River points and interior points in the States of Iowa and Missouri in a haul to Chicago, yet that the transportation business of the country has demonstrated that live hogs may, as articles of commerce, be transported great distances without any material injury or loss in value, and that neither these considerations separately nor both combined, upon the evidence adduced, furnish any ground for these discriminating rates against Chicago.

The intervenors also defend these discriminating rates against Chicago on the ground of immense investments of capital that have been made in the establishment of packing houses at Missouri River points and in the interior of Iowa and Missouri on the faith of these rates, which give employment to a large number of persons; that the business in these States has adjusted itself to this condition of affairs, and that now to make the changes in these rates claimed by petitioner would break up and ruin these packing houses. But upon the evidence the Commission is unable to find that the preferential rates given to these large establishments in Iowa and Missouri and at Missouri River points as well as in other portions of the country are reasonable and just when compared with the heavy discriminations laid upon the packers and buyers of Chicago.

506. A business like that involving the preparation for consumption of such a large and leading staple and necessary of life as meat, with all the competition that exists for it in different and competing localities, brought near to each other by the fast rail lines of the country, is too large to be done in a corner, and is a conspicuous instance of a commodity that requires at the hands of carriers rates that are not only reasonable and just in themselves, but relatively reasonable and just in their bearing upon these different localities.

The Poughkeepsie Iron Company, complainant, *v.* The New York Central and Hudson River Railroad Company, The Boston and Albany Railroad Company, and The Connecticut River Railroad Company, defendants. (4 I. C. C. Rep., 195.)

507. Pig iron is one of the lowest classes of freight, and the rates on that article complained of in this proceeding are not found to be unjust and unreasonable, either in themselves or relatively as charged petitioner compared with rates from Youngstown and Cleveland, Ohio.

508. Rates charged petitioner by the defendants on pig iron are in themselves, as well as relatively, the same in substance as rates charged other manufacturers of pig iron at the producing furnaces in the State of New York.

509. Through rates on long hauls more usually than local rates on short hauls encounter water competition and are made lower in proportion to distance by this cause as well as other causes which have been repeatedly discussed and considered by the Commission; and the doctrine contended for by petitioner in this proceeding, that an estimated proportion of the through rate must not be less according to distance than the local rate from an intermediate point to another point named in the line covered by the through rate, has often been held by the Commission to be untenable. (See Detroit Board

of Trade *et al. v. The Grand Trunk Railway Company and others*, 2 Inters. Com. Rep., 202; 2 I. C. C. Rep., 320. New Orleans Cotton Exchange *v. The Illinois Central Company et al.* 2 Inters. Com. Rep., 777; 3 I. C. C. Rep., 534.)

510. The cost of the production of pig iron at a furnace situated, like that of petitioner, on the Hudson River, in the State of New York, is much greater than at Youngstown, Ohio, or Birmingham, Ala., or at other points in the West and South; and while the aggregate rate charged petitioner to New England mills is a great deal lower than the aggregate rate charged on these Western and Southern irons to the same mills, yet it is not sufficiently so to overcome the difference in the cost of production; and the consequence is that petitioner finds itself at a serious disadvantage in competing with these Western and Southern irons in the markets and mills of the New England States, where there is a very great demand for this class of property.
511. The Commission has no power and authority in this proceeding to order other carriers not parties to this proceeding to raise their rates on pig iron transported from Youngstown and Cleveland, Ohio, to New England points in order to overcome the difference in the cost of production of pig iron now existing against petitioner; nor would the Commission enter upon the consideration of any such subject in a proceeding to which such carriers were not parties and in which such localities sought to be burdened with higher rates, for example, Youngstown and Cleveland, Ohio, had no opportunity to be heard; and the findings of fact in the present proceeding, which show that the rates already charged petitioner by the defendants are in themselves, as well as relatively, just and reasonable rates, demonstrate that the Commission could not order the defendants to lower these rates from Poughkeepsie to all points on the Boston and Albany road one-half, and to Holyoke nearly one-half, in order to overcome the difference in the cost of production of pig iron now existing against petitioner.

The Harvard Company, complainant, *v. The Pennsylvania Company, The Pennsylvania Railroad Company, The Lake Shore and Michigan Southern Railroad Company, The New York Central and Hudson River Railroad Company, The Baltimore and Ohio Railroad Company, The Grand Trunk Railway Company, The Cleveland, Columbus, Cincinnati and Indianapolis Railroad Company, The Valley Railway Company, The New York, Lake Erie and Western Railroad Company, The Boston and Albany Railroad Company, The New York and New England Railroad Company, and the New York, New Haven and Hartford Railroad Company*, defendants. (4 I. C. C. Rep., 212.)

512. Where questions of classification and rates are involved as to one particular article of freight, it is often necessary to examine and consider the classification and rates upon other articles in which the same calculations in respect of value, bulk, and expense of handling and of carriage would to a considerable extent enter; and for the purposes of such comparison it is not indisputably necessary that the articles should be competitive with each other, though if they are competitive then this feature must more strongly bring to view the fact of discrimination in rates, if there be such.
513. The valuable service performed to the transportation interests of the country by rate and classification committees. Rules recognized by the Commission in making of classifications and rates.
514. The mere fact that one article is of more general use and therefore shipped in greater quantities than another, when each as a rule is shipped in less than carload quantities, and of no considerable difference in bulk, weight, and value, and of no appreciable difference in expense of handling and of haul, constitutes in itself no reason why the first should receive a lower rate than the last. In such a case mere quantity, not measured by any recognized unit of quantity adapted to carriage, and lessening the expense of handling and carriage, can not be allowed to affect rates in the transportation of property.
515. Surgical chairs compared with other freight and reasons stated as to what the rates on them should be as articles of commerce in course of transportation.

George Rice *v. The Atchison, Topeka and Santa Fé Railroad Company, The Atlantic and Pacific Railroad Company, The Alabama Great Southern Railroad Company, The Alabama and Vicksburg Railway Company, The Central Pacific Railroad Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, The Illinois Central Railroad Company, The International and Great Northern Railroad Company, The Louisville, New Orleans and Texas Railway Company, The Mobile and Ohio Railroad Company, The Newport News and Mississippi Valley Company, The New Orleans and Northeastern Railroad Company, The Southern Pacific Company, The St. Louis, Iron Mountain and Southern Railway Company, The Texas*

and Pacific Railway Company, and the Union Pacific Railway Company. (4 I. C. C. Rep., 228.)

516. Competition as a factor in making rates: (a) The competition between all-waterlines and the all-rail lines in the carriage of petroleum and its products from the port of New York to San Francisco, Oakland, Sacramento, Stockton, Marysville, San Jose, and San Diego, in the State of California, is actual and involves the transportation of traffic important in amount. (b) The competition lines between the part-rail and part-water lines and the part-pipe lines and the part-water lines on the one side from the oil fields of Pennsylvania and Ohio via the port of New York to San Francisco, Oakland, Sacramento, Stockton, Marysville, San Jose, San Diego, and Los Angeles, in California, in the carriage of petroleum and its products, on the one hand, and the competition of the all-rail lines on the other, in the carriage of the same kinds of property from and to the same points named, is a competition that is actual and involves the transportation of traffic important in amount. *Held*, On these facts and upon the authority of numerous decisions cited in this opinion, a dissimilarity of circumstances and conditions is thus shown to exist at the California points named as compared to the circumstances and conditions which exist in the carriage of this traffic by the all-rail lines, at intermediate points along such all-rail lines, and that it is such a dissimilarity of circumstances and conditions as is recognized by the act to regulate commerce, and warrants the all-rail lines in making such just and reasonable rates as will enable them to meet the low rates and competition of the competing all-water lines and of the competing part-water and part-rail lines at said California points above named, and that in doing so the said all-rail lines are not obliged to make their rates at intermediate points along their lines as low as the rates forced upon them by the competition at said California points above named, viz, San Francisco, Oakland, Sacramento, Stockton, Marysville, San Jose, Los Angeles, and San Diego.
517. The "blanket rate," as it is called, by which the same rate is charged by the all-rail lines from the city of New York, and from all points in the oil-producing regions in the States of Pennsylvania, Ohio, and West Virginia, and from all the territory in the United States east of the ninety-seventh meridian of longitude, in the carriage of petroleum and its products to San Francisco, Oakland, Sacramento, Stockton, Marysville, San Jose, Los Angeles, and San Diego, in the State of California, is a rate that has its origin in and is based upon actual competition for the carriage of this large traffic, on the one side, by the all-rail lines, and, on the other side, by the lines part rail and part water, and also, in some instances, all-water lines, and also, in other instances, part-pipe lines and part-water lines; and it is a rate of which petitioner has no right to complain as being a violation of the fourth section of the act to regulate commerce, because it does not appear from the evidence that it is a violation of that section.
518. The other issue upon which this case was tried, namely, that an unlawful preference was shown to the Standard Oil Trust and the companies, firms, and associations affiliated to the said Standard Oil Trust by the all-rail carriers in making low rates for them and for their benefit to certain California points where there were receiving-tank stations erected by the said Standard Oil Trust and its affiliated companies, firms, and associations, and then by shipment afterwards from said receiving-tank stations to adjacent localities on low rates made for short local hauls in California, whereby an unlawful preference was shown to said trust and its affiliated firms, companies, and associations, is not sustained by the evidence in this proceeding.
519. No question is presented in this case as to whether the rates charged by the all-rail carriers at intermediate points are just and reasonable or not, but, on the contrary, the case was so presented and tried as to distinctly indicate to the Commission that no decision was desired in regard to this matter, for no evidence was offered concerning it by either side; and the case being one that is *inter partes* commenced, prosecuted, and defended by able counsel for the respective parties, the Commission has heard, considered, and determined it as presented by the parties and their counsel.
520. It appears that the Southern Pacific Company and the Atchison, Topeka and Santa Fé Railroad Company each has several stations on their lines at which no publication is made in their tariffs of the rates at these stations; and this they admit; and the Commission finds that this conduct on their part has been owing to a misapprehension and misconstruction of the law, and in accordance with a usage and practice long existing among railroads; the Commission therefore orders them to make publication of the rates they charge at these stations in their tariffs; and in all other respects, as to these

defendants and the Union Pacific Railway Company, the petition in this proceeding stands dismissed.

521. As to the other rail-carrier defendants in this proceeding, which are certain Southern and Southwestern railroads, it appears in a general way that there is water competition at Memphis, Vicksburg, New Orleans, Mobile, and Galveston, but upon this point the evidence is not sufficiently clear to enable the Commission to determine the extent to which this competition at each of these points is actual, and whether it involves traffic important in amount; and the Commission therefore retains the case as to these defendants and will hereafter notify the parties as to the time when and the place where all such further evidence will be heard upon these points that the parties may desire to offer.

W. S. King & Co., complainants, *v.* The New York, New Haven and Hartford Railroad Company and The New York and New England Railroad Company, defendants. (4 I. C. C. Rep., 251.)

522. A line of steamships plying between New York and Boston every other day makes the distance in twenty-four hours, does the largest part of the carrying trade of the grocers of Boston on shipments from New York, carries flour from New York to Boston for 8½ cents per 100 pounds; other lines, part water and part rail, known as the "Sound Lines," make daily trips between New York and Boston, and carry flour from New York to Boston at 9 cents per 100 pounds; an all-rail line composed of the lines of the defendants upon through billing and through rates to Boston alone on shipments from New York makes daily runs between these points and carries flour from New York to Boston at 9 cents per 100 pounds; each and all of these carriers are in actual competition for this business, and it involves the carriage of traffic important in amount. *Held*, upon the facts, that this is a case in which the circumstances and conditions in the carriage of this commodity are substantially dissimilar at Boston to what they are at Readville, an interior town about 8 miles from Boston, on the line of the all-rail carriers, where no competition exists between the all-rail carriers and the water lines, and justifies the all-rail carriers in meeting the rate by the water line at Boston by charging 9 cents per 100 pounds on flour, while the combined local rates of the two rail carriers are higher upon shipments of this kind of freight from New York to Readville than they are upon the joint through rate from New York to Boston.
523. The all-rail line is composed of two separate and distinct lines of railroad, owned by two separate and distinct corporations; but by an arrangement these two corporations make joint through rates on all business from and to New York and Boston passing over their lines, and for this business they furnish fast freight trains, which stop at no stations between New York and Boston, and have the right of way over all other freight trains; as to all other points along their line, however, they each charge their local rates, and this business is done by way freight trains of each company, respectively, for itself and on its own account; all of which methods and rates in each instance are duly advertised in their published tariffs.
524. On the facts herein above stated, a firm of dealers in the city of Boston ordered a consignment of flour from New York to Readville by the all-rail lines of the defendants in this proceeding, and subsequently claimed in their complaint to the Commission that they should have been charged for this service the through rate to Boston, and not the local rates of the defendants from New York to Readville. *Held*, that the facts show that complainants are mistaken as to their rights in this matter, and that the complaint can not be sustained, and must be dismissed without prejudice.
525. According to the evidence, the cost of service is far less expensive to the carrier in doing the through business than in doing separately, each for itself, the combined local business of the two railroad companies. It does not appear that the through rate to Boston is unreasonably low; nor does it appear upon the evidence in this proceeding that the local rates of these two railroad companies are unjust and unreasonable.
526. The joint through rate to Boston on flour is one that is forced upon the all-rail carriers by the competition of a water line not subject to the act to regulate commerce, and is a rate, low as it is, in which there is a small margin of profit to the all-rail carriers, while the combined local rates to Readville, although considerably higher, relate to a service that is wholly different in all its material features, methods, and aspects, rendered by the carriers under circumstances and conditions that are substantially dissimilar.

527. The evidence fails to sustain the allegation of the complaint that complainants formerly shipped to Readville from New York over the roads of the defendants at Boston rates.
- S. C. Capehart and Jasper Smith, owners of the steamer R. T. Coles, complainants, *v.* The Louisville and Nashville Railroad Company, The Memphis and Charleston Railroad Company, The East Tennessee, Virginia and Georgia Railway Company, and The Nashville, Chattanooga and St. Louis Railway Company, defendants. (4 I. C. C. Rep., 265.)
528. Several rail carriers engaged in interstate commerce each cross or touch a navigable river, leaving a large space of territory along and near the river and between their lines that can be served only by steamboats, and in connection with steamboats these rail carriers carry freight to and receive it from this territory at points where they touch or cross the river, respectively, but as to it they make through rates with only one line of steamboats, and refuse to make such through rates with other steamboats on the river. *Held*, That under the law the rail carriers may do this, and that it is not unjust discrimination nor unlawful preference. (Citing *Napier v. The Glasgow and Southwestern Railway Company*, 1 Railway and Canal Cases, 292.)
529. In such a case all that a steamboat has a right to demand, with which the rail carriers have refused to make through rates and to do through billing, is that the rail carriers shall receive from and deliver to such steamboat freight for transportation at their published local tariff rates.
530. Through rates and through billing are matters of agreement among carriers engaged in interstate commerce, and, as was decided in the case of *The Little Rock and Memphis Railroad Company v. The East Tennessee, Virginia and Georgia Railway Company* (2 Inters. Com. Rep., 454; 3 I. C. C. Rep., 1), the Commission has no power under the statute to compel them against their consent to enter into arrangements for through rates and for through billing.
531. An aggregate through rate is itself an entirety, although made up of agreed percentages, proportions, or divisions, as the case may be, of the entire rate among the several carriers; and where the rail carrier makes a through rate from a point on a navigable river with a steamboat line, and refuses to make such through rate with another steamboat, the Commission can not compel the rail carrier to receive freight from or deliver it to the steamboat with which it has refused to make a through rate and to do through billing upon the prepayment of charges for an estimated proportion of the through rate equal in amount to that which the rail carrier receives from the steamboat line with which it has an arrangement for through rates and through billing.
532. Where a carrier not subject to the act to regulate commerce—for example, a steamboat plying the Tennessee River between Decatur, Ala., and Bridgeport, in the same State—has applied to rail carriers engaged in interstate commerce for through rates and through billing of freight and has been refused these, and during a period of several years has paid these rail carriers their local published tariff rates on freight, and now sues to recover the difference between the amount so paid on the local rates and the proportion of the through rate between the same points covered by the local rates. *Held*, That no recovery can be had in such a proceeding before the Interstate Commerce Commission, and the complaint is dismissed without prejudice.
533. The common carriers named and referred to in the last clause of section 3 of the act to regulate commerce are such alone as are subject to the provisions of that statute
- James McMillan & Co., complainants, *v.* The Western Classification Committee, defendants. (4 I. C. C. Rep., 276.)
534. Whether a complaint to the Interstate Commerce Commission in regard to classification and rates is formal or informal, it is not enough that it be made against a classification committee or a rate committee concerning grievances alleged to be perpetrated by carriers in the matter of classification and rates who are represented to some extent by such classification or rate committee in making rates, but which carriers are not bound to accept such classification and rates and do not accept them any further than they see proper to do so; in such a case the carriers who, it is alleged, are guilty of perpetrating the grievances should be made the parties defendant to the complaint and the complaint should point them out by name.
535. The Western Classification Committee, in the making of classification and rates, represents about seventy-five railroad companies, but the classification and rates made by this committee are merely recommendatory to the

carriers in the association, and it is not obligatory upon the carriers to accept and operate them. Some of the carriers upon such articles—for example, salted hides and pelts in less than carloads—make commodity rates of their own upon the classification and rates different from those prepared and recommended by the classification committee, while other carriers do not. Upon a complaint by a shipper against the classification committee alone, upon this statement of facts, it is evident that no investigation or order that the Commission could make would have any binding effect whatever upon the carriers.

536. Where all the interstate carriers of the country, working through a committee selected by them for that purpose, are endeavoring to reach a uniform classification of freight, instead of having the various different and conflicting classifications that exist, it being apparent to the Commission that such uniform classification is a result that is greatly in the public interests, as well as in the interest of the carriers, and that has often been recommended by the Commission to the carriers, the Commission will not embarrass, delay, or retard the carriers in this work by instituting investigations of its own under the twelfth section of the act to regulate commerce involving the classification of a few enumerated articles, transported from and to an extended area of country, but unless a formal complaint is made against the carriers in regard to such matter and a hearing of it pressed to a determination by the parties, the Commission will wait a reasonable time to see the result of the effort being made by the carriers in their efforts to arrive at a uniform classification.

537. When an informal complaint is made in regard to such a matter, against a classification committee alone, the Commission will, if it can, endeavor to reach some ground that will fairly and justly adjust the differences between the complaining shippers and the carriers; but if it appear that these conflicting differences exist not only between the carriers and the complaining shippers, but that there are other localities and other dealers whose interests are directly involved and who are opposed to the relief sought by the complaining shippers, then the practice of the Commission is not to proceed in any investigation of the complaint until the complaint is put into such shape that such localities and dealers, as well as the carriers complained of, can have an opportunity to be heard.

Hervey Bates and H. Bates, jr., v. The Pennsylvania Railroad Company, The Pennsylvania Company *et al.* (4 I. C. C. Rep., 281.)

538. Upon a rehearing of this case, the additional evidence warrants a finding contrary to what appeared and was found in the original hearing, that the cost to the defendants of transporting the direct products of corn, including terminal expenses properly chargeable as freight charges, between Indianapolis and seaboard points, is greater on the product than on raw corn.

539. Upon the evidence produced at the former hearing it was decided that no reason was shown for a differential rate between corn and the direct products of corn eastward between Indianapolis and the seaboard. The difference in rate complained of was $4\frac{1}{2}$ cents per 100 pounds between Indianapolis and New York, this being the proportion according to distance, of a 5-cent differential between Chicago and New York. Since the first hearing the defendants have reduced the differential to $2\frac{1}{2}$ cents per 100 pounds. The complainants claimed there should be no difference. The evidence produced at the rehearing satisfied the Commission, upon grounds stated in the opinion, that the former order should be vacated, and that no further order should now be made.

John C. Haddock, complainant, v. The Delaware, Lackawanna and Western Railroad Company, defendant. (4 I. C. C. Rep., 296.)

540. Complainant is a miner and shipper of anthracite coal from a region in Pennsylvania from which defendant is a common carrier, and also a miner, purchaser, and shipper of coal on its own account.

541. Complainant alleges that defendant gives to itself as a shipper of coal an undue and unreasonable preference and advantage in rates, as compared with those charged complainant; and further alleges specifically that the rates charged him by defendant on coal east to Hoboken, and west and north to Buffalo and other points, are unreasonable and unjust.

542. Respondent in reply relies on certain contracts between itself and complainant, entered into prior to the enactment of the act to regulate commerce, as controlling the charges for the transportation of coal by the former for the latter, and as precluding the jurisdiction of the Commission in the premises. The substance of one of these contracts is that the price for transporting

complainant's coal to Hoboken shall be 50 per cent of the price for which respondent sells its own coal in Hoboken; the substance of other contracts is that complainant may ship his coal to points north and west upon the same terms and conditions as respondent for the time being transports coal for other parties, the terms to other parties being fixed in the published tariffs of respondent.

543. No claim is made that the validity of these contracts has been impaired or affected by the passage of the act to regulate commerce, although the Commission distinctly propounded the inquiry whether such claim was made.
544. The case being thus at issue, the complainant applied for subpoenas *duces tecum*, to compel certain third parties, as well as officers of respondent, to produce certain papers and contracts, alleged to be material as evidence upon the issue; and respondent moved to dismiss for want of jurisdiction.
545. The Commission carefully abstains from expressing any opinion as to the effect of the act to regulate commerce in impairing the validity of the contracts referred to, but, assuming them to be still in force, as both parties admit them to be, *Held*, (1) That complainant is precluded, by the terms of the contract for shipping coal to Hoboken, from going into evidence to show that the rate on his coal to Hoboken ought to be different from that fixed by the contract; and witnesses and evidence asked for to that end are immaterial. (2) The contracts providing that complainant may ship coal to points north and west on the same terms and rates that respondent for the time being gives other persons do not preclude complainant from showing that such rates are unjust, oppressive, or unreasonable. Complainant is therefore entitled to a hearing upon that question. (3) The Commission can not, for the purpose of discovering and preventing unjust discrimination by respondent, which is both a shipper and a carrier of its own products over its own line, compel it to keep separate accounts, showing what it charges itself for transportation or what the cost of transportation to it is; and even were such a separate account required it would form no safe guide in determining whether respondent did or did not use its power as a carrier oppressively. (4) The application for subpoenas *duces tecum* is denied. As applicable to contracts and papers of third persons, not before the Commission, it is denied on the ground of the injustice that might be done such persons; and generally (for the present at least) it is denied on the ground that the material facts can be proven by the testimony of witnesses, without the aid of documentary evidence; although respondent will be expected to produce, for purposes of examination, any books and papers of its own material to the controversy. (5) The respondent's motion to dismiss the complaint *in toto* is denied, as good ground of complaint is set forth in respect to northern and western shipments.

The Kauffman Milling Company *v.* The Missouri Pacific Railway Company, The St. Louis and San Francisco Railway Company, The St. Louis, Arkansas and Texas Railway Company, The Missouri, Kansas and Texas Railway Company, The Atchison, Topeka and Santa Fé Railroad Company, The Austin and Northwestern Railway Company, The Denver, Texas and Fort Worth Railroad Company, The Fort Worth and Rio Grande Railway Company, The Gulf, Colorado and Santa Fé Railway Company, The Houston, East and West Texas Railway Company, The Shreveport and Houston Railway Company, The Houston and Texas Central Railway Company, The Texas Central Railway Company, The International and Great Northern Railroad Company, The Natchitoches Railroad Company, The San Antonio and Aransas Pass Railway Company, The Southern Pacific Company, The Texas and Pacific Railway Company, The Texas, Sabine Valley and Northwestern Railway Company, and the Texas Trunk Railroad Company. (4 I. C. C. Rep., 417.)

546. For reasons peculiar to the territory lying west of the Mississippi River, comprising a large portion of Texas, the State of Missouri, and a considerable part of Kansas, the rates on wheat and wheat flour are grouped without reference to distance, and a lower rate has been charged on wheat than on wheat flour for fifteen years or more. Prior to 1886 the difference in the two rates was 15 cents per 100 pounds or greater. In 1886 a readjustment of rates was made, and upon consideration of all the circumstances and conditions and claims of rival localities the differential was reduced to 5 cents per 100 pounds, which has since been maintained.
547. Upon complaint made by millers of Missouri, supported also by millers of Kansas, against a differential of 5 cents per 100 pounds, and claiming an equal rate on wheat and flour carried from Missouri and Kansas into Texas. *Held*, That under the conditions existing in the territory in question a rate of 5 cents less per 100 pounds on wheat than on flour does not as a matter of fact work unjust discrimination, and is not therefore unlawful.

548. It appearing that the carriers have at times reduced the rate on wheat without a contemporaneous reduction on flour, and so made a larger differential than 5 cents per 100 pounds, which is sometimes maintained for a considerable period, it is found that a differential exceeding 5 cents per 100 pounds works unjust discrimination, and is unlawful.
549. Reserving any questions that may arise in case a uniform classification shall be established, at present an exception to a general rule of classification or rate making may be justified by adequate considerations in view of dissimilar conditions in different portions of the country, and when a rigid application of a general rule will be injurious to important public interests, an exception is only reasonable.
550. The power to regulate commerce among the States is absolute in Congress, and rates on such commerce may be regulated by Federal authority with reference to trade conditions and circumstances of localities without infringing the rights or immunities of such commerce under the Constitution.
551. The decision in this case applies only to the present situation in the territory in question, and is not intended to lay down a permanent rule for the future nor to apply elsewhere.

Proctor & Gamble v. The Cincinnati, Hamilton and Dayton Railroad Company, The Pittsburg, Cincinnati and St. Louis Railway Company, and The Pennsylvania Railroad Company. (4 I. C. C. Rep., 443.)

Proctor & Gamble v. The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, The Lake Shore and Michigan Southern Railway Company, and The New York Central and Hudson River Railroad Company.

Proctor & Gamble v. Orland Smith and H. C. Yergason, Receivers of the Cincinnati, Washington and Baltimore Railroad Company, and The Baltimore and Ohio Railroad Company.

552. A petition or motion for rehearing can not be granted on mere allegation of error in the findings of fact, and such a petition or motion must be supported by proof showing, *prima facie* at least, that there was such error. The affidavits in this case fail to make such showing.

The New York Board of Trade and Transportation, The Commercial Exchange of Philadelphia, and The San Francisco Chamber of Commerce v. The Pennsylvania Railroad Company, The Pittsburg, Fort Wayne and Chicago Railway Company, The Pittsburg, Cincinnati and St. Louis Railway Company, The New York Central and Hudson River Railroad Company, The Michigan Central Railroad Company, The Lake Shore and Michigan Southern Railway Company, The Chicago and Grand Trunk Railway Company, The New York, Lake Erie and Western Railroad Company, The Chicago and Atlantic Railway Company, The New York, Pennsylvania and Ohio Railroad Company, The New York, Chicago and St. Louis Railroad Company, The West Shore Railroad Company, The Delaware, Lackawanna and Western Railroad Company, The Grand Trunk Railway Company of Canada, The Wabash Railroad Company, The Baltimore and Ohio Railroad Company, The Philadelphia and Reading Railroad Company, The Central Railroad Company of New Jersey, The Boston and Maine Railroad Company, The Louisville, New Orleans, and Texas Railway Company, The St. Louis, Iron Mountain and Southern Railway Company, The Southern Pacific Company, The Union Pacific Railway Company, The Northern Pacific Railroad Company, The Canadian Pacific Railway Company, The Texas and Pacific Railway Company, The Illinois Central Railroad Company, and The Lehigh Valley Railroad Company. (4 I. C. C. Rep., 447.)

553. The act to regulate commerce specifically provides for the regulation of the transportation of foreign merchandise when brought from a foreign port of shipment to a port of entry of the United States and transported from such port of entry to a place within the United States upon a through bill of lading, or when transported from a foreign port to a port of entry of a foreign country adjacent to the United States and transported from such port of entry to a place of destination within the United States upon a through bill of lading.
554. The regulation thus provided is such as regulates the rates, charges, facilities afforded, and treatment of the foreign merchandise from the port of entry in either instance as the case may be, to the place of destination of the merchandise within the United States, but it is not a regulation that extends to the control of rates made upon such foreign merchandise in the foreign port of shipment for its carriage to the port of entry of the United States or to the port of entry in a foreign country adjacent to the United States.
555. With respect to that part of the carriage of such foreign merchandise between the ports of entry and the place of destination in the United States the rule of the statute is that it is entitled to no preference in rates, charges, facili-

ties afforded, and treatment over domestic merchandise or other merchandise when these are a like kind of traffic transported from such ports of entry to such places of destination, but as to that service it stands upon the same basis of equality with domestic merchandise or other freight as to rates, charges, facilities afforded, and treatment, and must be carried upon this part of its journey under the inland tariffs of the carriers established for the transportation of domestic merchandise or other freights, and under the same rules governing their carriage, as to weight, bulk, value, expenses of carriage, and all such other circumstances and conditions as enter into the making of just and reasonable rates and of avoiding unlawful prejudice and unjust discriminations, such as is provided by the statute.

556. The circumstances and conditions surrounding the making of the rates upon such foreign merchandise in the foreign port of shipment have had their weight and operation in its foreign carriage to the port of entry and in the charges made and facilities afforded for that service, but after such foreign merchandise has been brought within the United States on its way to destination in the United States it encounters other circumstances and conditions that are controlling in this part of its carriage, namely, the laws of the United States made for the regulation of its rates and carriage.
557. The publication of such inland joint tariffs for the transportation of such foreign merchandise under the statute and of advances and reductions should be made at the port of entry and also at the point of destination of freight in the United States by posting the same in a public place at the depot of the carrier where the freight is received in the port of entry and where it is delivered at the place of destination in the United States.
558. The term "a like kind of traffic," as it occurs in section 2 of the act to regulate commerce, and as used in this report and opinion, does not mean traffic that is identical, but it means traffic that is of "a like kind" with other freight in the elements of a fair and just classification for the purpose of arriving at a just and reasonable rate and a rate that will avoid unjust discrimination and unlawful preference.
559. Commodity class rates described and discussed.
560. The power of interstate carriers to make commodity class rates and special class rates to meet the circumstances and conditions of traffic along their lines recognized and defined.

Coxe Brothers & Company v. The Lehigh Valley Railroad Company. (4 I. C. C. Rep., 535.)

561. Freight classification is deemed by the railroads convenient and essential to any practical system of rate making, and is so recognized, though not enjoined, by the act to regulate commerce.
562. When classification is used as a device to effect unjust discrimination or as a means of violating other provisions of the statute, the act requires the Commission to so revise and correct such classification and arrangement as to correct the abuse.
563. Besides terminal expenses and other aggregate charges not dependent upon the distance freight is moved, there are other conditions which justify a lower proportionate charge for longer distances.
564. Through transportation over connecting lines is favored by the statute, and the rate over such through lines is correctly adjusted upon the distance through, and not upon the shorter distances over, the several lines.
565. Two roads by agreement carried bituminous coal from the Snow Shoe region in Pennsylvania to Perth Amboy, N. J., a distance of about 300 miles, at a higher aggregate, but lower proportionate, rate than was charged by one road on anthracite for the distance over its line, the distance over such line being about 150 miles. *Held*, That this was no undue preference in favor of the bituminous coal traffic and subjected anthracite traffic to no unreasonable disadvantage, except as the anthracite charges might be excessive.
566. A railroad company carrying coal as interstate traffic is the owner of the capital stock of a coal company, which under its charter holds lands, mines, buys and sells coal, and ships over the lines of said railroad company. *Held*, Where such conditions result in violations of the act to regulate commerce the only regulation practicable is the enforcement of the provision of the act requiring rates to be reasonable.
567. It is often impracticable to establish different rates on the same commodity from practically the same locality to the same market, and the owners of mines in the Lehigh anthracite region are subjected to no unreasonable disadvantage from the present grouping of mines based on more than actual distance when shipping east and less than actual distance when shipping west.

568. A railroad company had in force for a period of more than two years next before the act to regulate commerce took effect a scale of charges on anthracite coal considerably lower than its present rates, which are higher on coal than on iron ore, pig iron, and other low-grade freight, and also higher than the charges of said road on general freight, the expense of carrying which is much greater than the expense on coal. *Held*, That such higher rates on coal are unreasonable.
569. The act to regulate commerce declares every unreasonable charge unlawful, requires the Commission to enforce its provisions and confers the power, and imposes on the Commission the duty of determining what are reasonable rates, as well as what are unreasonable.
570. A railroad company by putting in force a rate of charges furnishes evidence that the rate is profitable, which is more convincing when such rate is long maintained; and where a carrier put in force and maintained for nearly two years, immediately after the act to regulate commerce took effect, a scale of charges largely in excess of that maintained for two years next before the act, and the lower rates were sufficient to meet all the obligations of the road, including income on investment. *Held*, The higher rate should be reduced.

The Boston Fruit and Produce Exchange v. The New York and New England Railroad Company, The New York, New Haven and Hartford Railroad Company, The Pennsylvania Railroad Company, The Central Railroad Company of New Jersey, and The Lehigh Valley Railroad Company. (4 I. C. C. Rep., 664.)

571. The words "common control, management, or arrangement," as found in the first section of the act to regulate commerce, defined and applied to the special facts of the case.
572. Section 7 of the act may properly be considered in construing the general jurisdictional clause of the first section.
573. Contracts and tariffs filed with the Commission under section 6 of the act may be considered, although not specifically introduced in evidence on the hearing.
574. The Boston Fruit and Produce Exchange is a mercantile society, such as is described in the thirteenth section of the act, and as such has the right to maintain a proceeding like the present without showing special damage to itself.
575. Elements that will be considered in fixing the rates for the transportation of perishable fruit under special circumstances discussed and applied to the facts found.
576. The gist of the present complaint is that the rate on peaches from the Delaware district to Boston is unreasonably high and oppressive, and the fact being so found a reduction is ordered.

Hamilton & Brown v. The Chattanooga, Rome and Columbus Railroad Company, The Louisville and Nashville Railroad Company, and the Nashville, Chattanooga and St. Louis Railway Company. (4 I. C. C. Rep., 686.)

577. The rates on freight from interstate points to Kramer, Ga., via the Chattanooga, Rome and Columbus Railroad are made by taking the through rate to recognized "basing points," and adding thereto that local rate which will give the lowest combination. This method of determining a rate criticized, and as applied to such traffic to Kramer, operates as an unjust discrimination against that locality.
578. All the carriers participating in the traffic the rates for which were questioned in this proceeding were not made parties, and the case, while showing that the through rates were discriminatory and unjust, failed to disclose sufficient facts upon which an accurate decision could be based, and accordingly it was held that the carriers who were parties to the proceeding be required to adjust their respective tariffs so as to avoid discrimination against Kramer, and that the carriers who were not parties be summoned to appear and show cause why a like order be not issued as to the business in which they participate, unless their tariffs are voluntarily adjusted so as to avoid the discrimination complained of.

New Orleans Cotton Exchange v. Louisville, New Orleans and Texas Railway Company. (4 I. C. C. Rep., 694.)

579. Common carriers are required to post in their depots, stations, and offices schedules showing the rates and charges for transportation in force on the routes of such carriers, as well as on freight which is, as on that which is not, for export.
580. Where a carrier corrects the inequality of rates complained of and thus makes all the reparation asked in the complaint, or that the Commission could afford, no order is required, and none will be issued.

The Delaware State Grange of the Patrons of Husbandry *v.* The New York, Philadelphia and Norfolk Railroad Company; The Delaware Railroad Company; The Philadelphia, Wilmington and Baltimore Railroad Company, and the Pennsylvania Railroad Company. (4 I. C. C. Rep., 588.)

581. For a special service by a carrier, such as the transportation of perishable freight, requiring quick movement, prompt delivery at destination, special fitting up of cars, their withdrawal from other service, and their return empty on fast time, all involving greater expense to the carrier, a higher rate than for the carriage of ordinary freight is warranted by the conditions of the service and is reasonable and just.

582. But the higher rate for a special service should bear a just relation to the value of the service to the traffic, and is not wholly in the discretion of the carrier. While a carrier should be fully compensated, the public interests require that the traffic should not be rendered valueless to the producer if the charges of the carrier have such an effect and can be reasonably reduced.

583. The requirement of the statute that all rates shall be reasonable and just involves a consideration of the commercial value of the traffic, and implies that rates should be so adjusted that producers of traffic as well as carriers may carry on their pursuits successfully, if practicable for both, and without injustice to the carrier. The public good requires, what is plainly the spirit of the law, that the transportation interests are not alone to be considered, but that in the just exercise of regulation care should be taken that the lawful and necessary occupations of citizens are not unjustly burdened.

584. The complaint was that the defendants' charges for the transportation of specified perishable articles of truck farming from stations on their lines of railroad to Jersey City and Philadelphia were excessive and unreasonable, and that the charges were higher for the shorter distances from their stations on the peninsula in Delaware and Maryland than for the longer distance from Norfolk, Va. It was found that the charges on certain articles specified from stations on the peninsula were excessive and a reduction was ordered. The reduced rates are, however, in many cases still considerably above the rates on the same articles from Norfolk, and the showing not being sufficient to enable the Commission to determine satisfactorily how far the lower Norfolk rates were justified by the differences in the conditions and circumstances, that subject is left for future consideration.

John P. Squire & Co. *v.* The Michigan Central Railroad Company, The New York Central and Hudson River Railroad Company, The Boston and Albany Railroad Company. (4 I. C. C. Rep., 611.)

585. The provision of the third section of the act to regulate commerce, prohibiting carriers from making or giving any undue or unreasonable preference or advantage to any particular person, firm, company, corporation, or locality, or any particular description of traffic, in any respect whatsoever, not only applies to relative rates on one description of traffic shipped to or from competing localities, but also to relative rates on differently described articles which are competitive in the same markets; and when carriers have established rates on articles of competitive traffic which are relatively reasonable and fair, they can not arbitrarily select particular articles of such traffic and materially raise or lower rates so established thereon without violating that provision of the statute.

586. The relation of rates ought to rest upon fixed and stable conditions. The fluctuations of markets are so frequent, especially as to competitive articles, and oftentimes unexpected, that commercial considerations alone would not furnish a sufficiently stable and fixed rule for guidance in making a rate that should remain substantially permanent through all fluctuations. The Commission does not, by a fixing of rates, attempt to overcome advantages which one producer or dealer may have in his geographical location, and to produce equality between competitors in all markets. It would be a useless task, even if it had the power, to attempt to accomplish such a result. The proper relation of rates for transportation of strictly competitive articles over the same line should be determined by reference to respective costs of service ascertained with reasonable accuracy.

587. Violation by one carrier of principles laid down in this case as governing relative rates on competitive articles does not justify similar violations by its competitors.

588. The rates involved in this case are those on live hogs, live cattle, and the dressed products of each. These are found to be competitive commodities, and therefore entitled to relatively reasonable rates for transportation proportioned to each other according to the respective costs of service.

Jacob Shanberg v. The Delaware, Lackawanna and Western Railroad Company and The New York, Chicago and St. Louis Railroad Company. (4 I. C. C. Rep., 630.)

589. A firm of cattle dealers in the city of New York, who procured their cattle on a large scale from Chicago and other Western points for domestic consumption as well as for export, make an arrangement with two interstate rail carriers, constituting a thorough line from Chicago to New York, that the said firm will, under the name of an express company of their own creation, furnish not less than 200 or more than 400 improved live-stock cars for the transportation of these cattle. For the rental of these improved stock cars the carriers pay this express company three-fourths of a cent per mile, whether loaded or empty. Extraordinary facilities and rights of way are given these cars to enable them to make a large mileage, and they make more than twice the mileage of ordinary stock cars. Besides this, the carriers pay 50 cents for the loading of each of said cars with cattle at the Union Stock Yards in Chicago, for which no charge is made against the express company or the firm represented by it. In addition to this the carriers pay this firm yardage at the rate of $3\frac{1}{2}$ cents per hundred pounds on all their cattle, and upon all other cattle hauled for other firms in the care of this firm owning the express company, to its yards at Pier 45, East River. This yardage charge is thus paid to the said firm by the said carriers for keeping their cattle in the firm's own yards after delivery of them to the firm, and then this yardage charge is deducted from the tariff rate charged by the carrier. The amount of these rebates to this firm in rates on these cattle by these carriers more than pays the entire cost of the improved stock cars within two years after operations are commenced with them, including the expenses of operation, leaving said firm owning the cars and still operating them with all these advantages and rates and facilities. *Held:* (1) This is an unlawful preference to the firm owning these improved stock cars and a violation of the act to regulate commerce. (2) It is an unlawful and unjust prejudice to other cattle firms and dealers in New York who are competitors in the business of said firm owning said improved stock cars.

The New York and Northern Railway Company v. The New York and New England Railroad Company, The Housatonic Railroad Company, and The New England Terminal Company. (4 I. C. C. Rep., 702.)

590. The respondent, which is a carrier by a railroad running through the State of Connecticut to a point in New York, had had for some time a through billing arrangement and an agreement upon through rates for traffic over its own line destined to New York City, with petitioner's road, which connected therewith at its New York terminus. This arrangement respondent broke up, and declined to enter into any new one in its place.

The reason for breaking up this arrangement was that respondent had entered into a new arrangement with another road connecting with it at a point in Connecticut, whereby a New York City line was formed over which it was intended to take the business which formerly passed over respondent's line to petitioner's. It was not complained that petitioner's road was insolvent or not responsible for its contracts, or that the arrangement as before existing was unfair or unequal as between the parties thereto.

Such action of the respondent is held to be in violation of the second paragraph of section 3 of the act to regulate commerce, which requires that "every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

591. One reason assigned for breaking up the arrangement with petitioner was that respondent was joint owner with the road making the new line of a terminal company for delivery of freight in New York. This interest is not an excuse under the statute for discrimination against petitioner's line, and this whether the interest in the terminal company was large or small. Petitioner did not require or ask the services of the terminal company, but only to be allowed to continue as competitor for the business affected by the discrimination, and to offer its services to the public as such. It is found in the case that the public interest was injuriously affected by the discrimination.

592. It is of no importance to the question involved that after freight carried by petitioner's road reached High Bridge, in New York, its delivery from that point to the pier, which constituted the terminus of the carriage, was

made by an agent or contractor employed for the purpose. Petitioner, being carrier for the whole distance, was entitled to the privileges given by the statute accordingly.

Frederick P. Beaver and William D. Chamberlin, doing business under the firm name of Beaver & Company, *v.* The Pittsburg, Cincinnati and St. Louis Railway Company, The Cincinnati, Hamilton and Dayton Railroad Company, The New York, Lake Erie and Western Railroad Company, The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, The Dayton, Fort Wayne and Chicago Railway Company, The Lake Shore and Michigan Southern Railway Company, The New York Central and Hudson River Railroad Company, The Pennsylvania Railroad Company, The Baltimore and Ohio Railroad Company, The Wabash Railroad Company, The Chicago, St. Paul and Kansas City Railway Company, The Atchison, Topeka and Santa Fé Railroad Company, The Missouri Pacific Railway Company, The Chicago, Burlington and Quincy Railroad Company, The Hannibal and St. Joseph Railroad Company, The Union Pacific Railway Company, and The Chicago and Northwestern Railway Company. (4 I. C. C. Rep., 733.)

593. Where two kinds of soap are made use of for the same purposes, and are advertised and held out to the world as suited for like purposes, and are substantially equal in value, they should both for purposes of transportation and rating be placed in the same classification.

594. The soaps known as the Ivory Soap and the Grand Pa's Wonder Soap fall within this rule. Both are represented as suitable for laundry and also for toilet purposes, and both are used for those purposes. It would therefore be unjust discrimination to place one of them in a classification as toilet soap and the other in a much lower classification as laundry soap.

The James & Mayer Buggy Company *v.* The Cincinnati, New Orleans and Texas Pacific Railway Company, The Western and Atlantic Railroad Company, and The Georgia Railroad Company. (4 I. C. C. Rep., 744.)

595. Ordinarily longer distances warrant higher charges, but carriers may lawfully accept the same aggregate, though less profitable, rates for longer distances, provided such carriers do not "subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage."

596. The circumstances and conditions which make a greater charge for a shorter distance lawful relate to the nature and character of the transportation service rendered by the carrier over the same line to the longer and shorter distance points.

597. Water competition to justify the greater charge for the shorter distance must be competition in transportation to the longer distance point, and as to freight which, if not carried over the line on which it is located, would reach such destination by water transportation.

598. Goods shipped from Cincinnati, Ohio, to points in the State of Georgia are interstate traffic, and all the roads forming a part of the line over which such goods are carried to their destination are engaged in interstate commerce and are subject to the act to regulate commerce. Where two or more roads forming a continuous connecting line between points in different States bill and carry interstate traffic through to certain stations on the last road forming such line, neither the roads together nor any one of them can evade the obligations of the fourth section of said act by declaring that as to such traffic destined to such stations on such terminal road it is a local carrier.

The Boston Fruit and Produce Exchange *v.* The New York and New England Railroad Company, The New York, New Haven and Hartford Railroad Company, The Pennsylvania Railroad Company, The Central Railroad Company of New Jersey, and The Lehigh Valley Railroad Company. (5 I. C. C. Rep., 1.)

599. At the hearing of this case upon its merits the Commission prescribed the freight rate upon peaches in carload lots from New Jersey and the Delaware Peninsula to Boston, Mass. One of the defendants filed a motion for rehearing, based upon the claim that some of the other defendants construed the decision of the Commission as justifying them in insisting that the freight charge prescribed should be divided among the carriers on a mileage basis merely. *Held*, That the former decision of the Commission could not be fairly construed as justifying the claim that the single freight charge between the interstate points should be divided on a mileage basis merely; that many of the considerations which induced the fixing of an increased rate for the special service were peculiar to the Pennsylvania Railroad Company and in which the other carriers east of the Harlem River did not participate; that, under the pleadings and evidence in this case, the Commission could only prescribe a single rate for the service as an entirety, to be

reasonably and fairly divided among the several carriers by themselves; that the motion for a rehearing be overruled.

Daniel Buchanan v. The Northern Pacific Railroad Company. (5 I. C. C. Rep., 7.)

600. The rates on wheat and barley, of 50 and 56 cents per hundredweight respectively, charged by defendant from Ritzville, Wash., to St. Paul, Minn., a distance of 1,576 miles, in view of the circumstances and conditions surrounding the traffic, held not to be unreasonable.

The Railroad Commission of Florida v. The Savannah, Florida and Western Railway Company, The Charleston and Savannah Railway Company, The North Eastern Railroad Company of South Carolina, The Wilmington, Columbia and Augusta Railroad Company, The Wilmington and Weldon Railroad Company, the Seaboard and Roanoke Railroad Company, The Petersburg Railroad Company, The Richmond and Petersburg Railroad Company, The Richmond, Fredericksburg and Potomac Railroad Company, The Alexandria and Fredericksburg Railway Company, The Alexandria and Washington Railway Company, The Baltimore and Potomac Railroad Company, The Philadelphia, Wilmington and Baltimore Railroad Company, The Pennsylvania Railroad Company, The Florida Central and Peninsular Railroad Company, The Baltimore Steam Packet Company, The New York and Texas Steamship Company, The Clyde Steamship Company, and The Ocean Steamship Company of Savannah. (5 I. C. C. Rep., 13.)

601. The act to regulate commerce makes it the duty of this Commission "to investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission." The complaint in this case was brought by and in the name of the railroad commission of Florida, but the real parties in interest are large classes of growers, buyers, and shippers in the State of Florida. Since the complaint was filed the nominal complainant has ceased to exist. *Held*, That the repeal of the law creating the railroad commission of Florida could not operate as a withdrawal or dismissal of the complaint, that commission having been only an instrument for the transmission of the complaint to this Commission, and having fully performed that function before an end was put to its existence. To abate or dismiss the proceeding on that ground would be to sacrifice substance to form in contravention of the spirit and letter of the act to regulate commerce and of the rules of courts of law in analogous cases. *Held further*, That under the provision of the act to regulate commerce authorizing this Commission to "institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made," neither complaint nor complainant is necessary to confer jurisdiction.

602. The defendants, The Clyde Steamship Company, The New York and Texas Steamship Company, and The Florida Central and Peninsular Railroad Company, are common carriers engaged in interstate commerce by arrangement as alleged in the complaint, and as such are subject to the jurisdiction of this Commission in respect thereto.

603. It does not appear that defendants willfully omitted or failed to notify the Commission and the public of the advance in rates complained of, or that anyone has sustained damage or injury by reason of such failure or omission, and therefore there is no case made out for an application by the Commission to a district attorney of the United States for the institution of a prosecution, and no ground for a recommendation of reparation for such injury.

604. While a complainant has no interest in the division the defendants make between themselves, and it does not determine what the charge to the public must be, yet the division is not without significance in determining what are reasonable rates for the whole distance on the lines in question.

605. Carriers making an advance in rates should be able to present a satisfactory justification of such advance, particularly when the old rates have been of many years' standing and the advance is great and the traffic affected is of large and constantly increasing volume and of vital importance to a large section of country.

606. Upon consideration of all the facts and circumstances in this case—*Held*, That the advance of 10 cents per box in rates on oranges from Florida points to New York and other northeastern markets, made by defendants on November 23, 1890, was without justification, and so far as it exceeded 5 cents per box was unreasonable and contrary to law; that defendants be notified and required to make reparation for injuries occasioned by such unreasonable and unlawful rates to the several persons entitled thereto, and as such persons are not parties to this proceeding and the amounts wrongfully received from them, respectively, can not be ascertained from the evidence already taken, that this proceeding be continued for such further action or inquiry in that behalf as may become necessary.

Lehmann, Higginson & Co. v. The Texas and Pacific Railway Company, The Missouri, Kansas and Texas Railway Company, and George A. Eddy and H. C. Cross, receivers of said Missouri, Kansas and Texas Railway Company. (5 I. C. C. Rep., 44.)

607. A schedule of rates designated a "joint freight tariff" announcing a rate from New Orleans to Kansas City of 30 cents per hundred pounds of sugar was duly published and filed with the Commission by the New Orleans Traffic Association on behalf of the roads composing said association "and connections." The Texas and Pacific Railway Company, a member of said association, in its own behalf, issued and filed a supplemental sheet announcing said rate of 30 cents effective. The several companies composing said traffic association operate roads extending to and leading out of New Orleans, but none of them extending to Kansas City: *Held*, That a joint tariff of rates or charges must show on its face what carriers unite in establishing such joint tariff, and that the publication and filing of said schedule and supplemental rate sheet did not establish, as provided by section 6 of the act to regulate commerce, a joint tariff of rates and charges on a continuous line from New Orleans to Kansas City over the roads of said association, or of any one of them, in connection with any other road or roads. *Held further*, That where freight passes over a continuous line or route operated by more than one company on which no joint tariff of rates or charges has been established, the tariff of rates or charges is the sum of the established local rates or charges of the several companies operating such continuous line.

608. Several railway companies forming a continuous through line carried certain traffic to the terminal point at a 30-cent rate and for the same rate to an intermediate point, and to a point on a branch line more distant than said intermediate but less distant than said terminal point they maintained a rate of 42 cents on the like traffic: *Held*, That the roads might lawfully maintain the same rate at the intermediate and terminal points, and that some higher rate might be maintained to the branch-line point off the direct through line without unjust discrimination. *Held further*, That as to the branch-line point the complainant was entitled to a refund of the amount paid in excess of a reasonable rate.

The Hezel Milling Company v. The St. Louis, Alton and Terre Haute Railroad Company and the Illinois Central Railroad Company. (5 I. C. C. Rep., 57.)

609. For the carrier to pay the larger expense of the transportation of a remote shipper's merchandise to the station, and not to pay the less expense of such transportation of the nearer shipper's merchandise, would be the equivalent of a rebate to the former, the railroad service proper being the same to each and at the same rate; nor would it be treating all patrons with statutable equality to bear a part of the cartage expense for one shipper and not bear a part of it for another.

610. Rates for the transportation of flour originating at St. Louis or East St. Louis and shipped over defendants' lines are the same, and such flour is forwarded by the first-named defendant from its receiving station in East St. Louis. Shippers in St. Louis deliver flour to rail or wagon transfer companies at their stations in St. Louis and defendants bear the cost of transfer to said receiving station, the average being about 6 cents per barrel, or St. Louis shippers sometimes deliver to the wagon transfer company at their mill doors and then bear half of the cartage expense by wagon, the defendants the other half. Petitioner, who is a manufacturer and shipper of flour over defendants' lines in competition with St. Louis millers, teams flour from its mill, about one-half a mile, to said receiving station at East St. Louis, at a cost of 6 cents a barrel, or loads it on cars furnished by the defendants on a side track contiguous to said mill, at a cost of about 3 cents a barrel, being required to so load such cars that the lot for the nearest station is placed in the forward part of the trains and lots for other stations are arranged consecutively, according to distance, and also being required to clean and repair such cars before using. *Held*, That on flour destined to points outside the State which the initial carrier requests petitioner to haul to its station, or which petitioner is compelled to haul there by reason of proper cars not being furnished on said side track for loading, petitioner is entitled to a reduction of 6 cents a barrel from rates in force as long as defendants bear that amount of the cost of cartage for other shippers. *Held further*, That defendants' rule requiring petitioner to clean and repair cars furnished on said side tracks is unreasonable, but the requirement that petitioner shall load such cars according to stations is, in view of counter advantages, not unreasonable, and rates on

flour loaded by petitioner in properly cleaned and repaired cars so furnished are, upon the facts, properly the same as rates in force on shipments of flour originating in St. Louis.

611. With reference to the transportation of flour, defendants seem to treat St. Louis and East St. Louis as a single business community; therefore, they can not complain if this case is determined upon that theory. Taking petitioner's flour in cars from its mill is presumably equal in value to its expense of hauling by team; therefore, petitioner can not complain that the carriers bear a portion of the cartage expense of the St. Louis millers equal to the benefit it receives from being able to deliver on the side track at its mill. Questions arising under a practice of partial or absolute free cartage, or growing out of the existence of side tracks, to shippers' doors, must depend largely for solution on the particular circumstance of each case.

In the matter of the Carriage of Persons Free or at Reduced Rates, by the Boston and Maine Railroad Company. (5 I. C. C. Rep., 69).

612. The defendant issued passes entitling the holders to free transportation over the lines of its system, extending into the States of Maine, New Hampshire, Vermont, and Massachusetts; there were several classes of the persons who received the passes, among them gentlemen long eminent in the public service, higher officers of the States, prominent officials of the United States, members of the legislative railroad committees of the above-named States, and persons whose good will was claimed to be important to the defendant: *Held*, That the giving of free transportation to such persons was a violation of the act to regulate commerce.
613. The defendant also issued such passes to other classes of persons, among them the sick, necessitous and indigent, proprietors of hotels, members of the families of employees, agents of ice companies, milk contractors, State railroad commissioners, trustees of railroad mortgages, and newspaper publishers for advertising: *Held*, as to these latter classes of persons that as the investigation as to them had not been finished, the case should be held for further consideration and order.
614. When an investigation by the Commission to inquire into the business management of a common carrier has been fully concluded as to some matters, and not concluded as to others, an order may be made *pendente lite*, as to the former, and the cause retained for further consideration and order as to the latter.
615. Upon the facts found in this case, *Held*, That the second section of the act prohibits the giving of free transportation to the persons embraced within the classes first above named; that a carrier is bound to charge equally to all persons regardless of their relative individual standing in the community; that the words, "under substantially similar circumstances and conditions," relate to the nature and character of the service rendered by the carrier, and not to the official, social, or business position of the passenger; that section 22 of the act is exceptive in character and only applies to the persons and subjects expressly specified therein.

William H. Macloon v. The Chicago and Northwestern Railway Company. (5 I. C. C. Rep., 84.)

616. The provisions of the eighth, ninth, thirteenth, fourteenth, fifteenth and sixteenth sections of the act to regulate commerce construed in the light of recent decisions in Federal courts. *Held*, That a procedure for the enforcement of lawful orders of the Commission founded upon controversies requiring trial by jury having been provided by the amendment of March 2, 1889, of the sixteenth section of the act to regulate commerce, it is the duty of the Commission to pass upon the question of reparation for past damages whenever a claim is made therefor.
617. Defendant's railroad connects at Janesville, Wis., with the Chicago, Milwaukee and St. Paul Railway. Complainant is a merchant doing business at that point and having coal yards on the line of the latter road, but receiving shipments from points on the line of the defendant road, and his financial responsibility is not questioned in this proceeding. Carriers operating in that section of the country are members of a car-service association, which has established a rule requiring the payment of demurrage charges when cars are retained by shippers more than forty-eight hours after receiving notice that such cars are in position to unload, and the rule is set forth by the carriers in their bills of lading. Upon all the facts in this case, *Held*, That the action of defendant in refusing, after payment of freight and offer of customary switching charges, to switch two car loads of coal to the connecting line for delivery at the coal yard of the complainant on such line

unless he promised in advance to pay any demurrage charges that might be made, regardless of whether they were just or legally enforceable, was unreasonable, notwithstanding complainant had previously refused to pay demurrage charges on other cars shipped to his siding, which he had failed to fully unload within the time prescribed by the rule, and defendant by retaining the coal in its possession and demanding such promise from complainant as a condition precedent to the performance of its duty as a carrier subjected the complainant to unlawful prejudice and disadvantage. *Held further*, That complainant is entitled to reparation for injuries sustained in consequence of such refusal and neglect of defendant, but, the proof as to the extent of his damages being insufficient, that the case be held open for the present without order, and that upon notice of adjustment by the parties of the question of reparation the petition be dismissed.

Charles P. Perry v. The Florida Central and Peninsular Railroad Company, The Savannah, Florida and Western Railway Company, The Charleston and Savannah Railway Company, The Northeastern Railroad Company of South Carolina, The Wilmington, Columbia and Augusta Railroad Company, The Wilmington and Weldon Railroad Company, The Seaboard and Roanoke Railroad Company, The Petersburg Railroad Company, The Richmond and Petersburg Railroad Company, The Richmond, Fredericksburg and Potomac Railroad Company, The Alexandria and Fredericksburg Railway Company, The Alexandria and Washington Railway Company, The Baltimore and Potomac Railroad Company, The Philadelphia, Wilmington and Baltimore Railroad Company, The Pennsylvania Railroad Company, comprising The Atlantic Coast Dispatch Line. (5 I. C. C. Rep., 97.)

618. The act to regulate commerce expressly requires that transportation charges shall be reasonable, and empowers the Commission to enforce its provisions. Wherever the power of enforcing reasonable rates exists there must also exist the power to ascertain what is reasonable. The Commission is not restricted to finding that an existing rate is unreasonable and forbidding its continuance, but has the further authority to ascertain, order, and enforce a rate that is reasonable. The power to determine and declare what is a maximum reasonable rate also results from those provisions of the act which require the Commission to determine what reparation, if any, should be made by carriers to parties injured by their violations of law, and in cases of unreasonable rates the measure of reparation due to such a party is the difference between the rate actually charged and the reasonable rate which should have been charged.

619. Divisions of a joint rate among the carriers are sometimes inquired into for the purpose of ascertaining, from the divisions, whether a rate unreasonable in itself may not be traced to the inequality of such divisions.

620. The possible influence of water competition upon rates for the transportation of oranges and the nonexistence of such competition in the carriage of berries, because the latter can not be carried by water in any considerable quantities, does not authorize defendants to take advantage of the situation and charge unreasonable rates on berries.

621. Rates on interstate shipments from points on the initial carrier's line were shown to be greater for the shorter distance from Lawtey than for the longer distance over the same line in the same direction from Gainesville, and defendants were ordered to bring their rates from Lawtey and other points in that territory in conformity with the provisions of the fourth section of the act to regulate commerce. The fact that the initial carrier's line joins its connecting line at both Callahan and Gainesville and that traffic from Lawtey, an intermediate station, may be routed through Gainesville, the longer-distance point, does not authorize defendants to charge the higher rate from Lawtey when the traffic from that point and from Gainesville is in fact routed through Callahan.

622. Carriers should not treat shipments of traffic intended to be continuous between interstate points as consisting of two kinds of service independent of each other, the one to or from a so-called basing or competitive point on a through rate, and the other between the basing or competitive point and a so-called local or intermediate point on a local rate. *Re Tariffs and Classifications of Atlantic and West Point R. Co. et al.*, 2 Inters. Com. Rep., 461; 3 I. C. C. Rep., 46; and *Hamilton and Brown v. Chat.*, Rome and Col. R. Co. *et al.*, 3 Inters. Com. Rep., 482; 4 I. C. C. Rep., 686, cited and affirmed.

623. Circumstances and conditions which affect the question of reasonable rates on strawberries from points in Florida to New York City, including such characteristics of the traffic and its transportation as volume, weight, bulk, value, perishability, risk, expense of handling, and quick carriage in perishable freight trains, and return of empty cars, stated and compared with those surrounding the transportation of oranges and other traffic carried

by defendant in the same trains. Upon the facts appearing in this case, *Held*, That defendants' rates for services rendered in receiving, forwarding by their perishable freight trains, and delivering strawberries from Florida points to New York City should not exceed \$3.33 per hundred pounds, or \$1.66½ per crate of 50 pounds, from Callahan, Fla., to New York, and from Lawtey, Hammock Ridge, and other stations more distant from New York than Callahan, the total through rates should not be unreasonably in excess of the charge from Callahan, and should be filed with the Commission and published according to law.

624. Where claim for reparation is made in a complaint of unreasonable rates the burden of proof is on complainant to show the facts connected with the claim, and when these facts have not been sufficiently brought out to enable the Commission to justly determine what reparation is due to the complainant, in such cases it will decline to award reparation.

625. If defendants' rates on strawberries had been so excessive and unjust as to have rendered complainant's crop valueless to pick and market, it would not entitle him to reparation for loss thereby sustained, because such damages, would be too speculative, uncertain, and remote.

J. M. Rising, J. L. Brownlee, D. Q. Cole, and others, v. The Savannah, Florida and Western Railway Company, The Charleston and Savannah Railway Company, The Northeastern Railroad Company of South Carolina, The Wilmington, Columbia and Augusta Railroad Company, The Wilmington and Weldon Railroad Company, The Seaboard and Roanoke Railroad Company, The Petersburg Railroad Company, The Richmond and Petersburg Railroad Company, The Richmond, Fredericksburg and Potomac Railroad Company, The Alexandria and Fredericksburg Railway Company, The Alexandria and Washington Railway Company, The Baltimore and Potomac Railroad Company, The Philadelphia, Wilmington and Baltimore Railroad Company, and The Pennsylvania Railroad Company. (5 I. C. C. Rep., 120.)

This case was decided in accordance with the principles laid down in the foregoing case of *Perry*.

Murphy, Wasey & Co. v. The Wabash Railroad Company, The Chicago, Burlington and Quincy Railroad Company, the Detroit, Grand Haven and Milwaukee Railroad Company, The Chicago and Grand Trunk Railroad Company, The Chicago, Milwaukee and St. Paul Railway Company, The Chicago, Burlington and Kansas City Railway Company, and The Chicago, Rock Island and Pacific Railway Company. (5 I. C. C. Rep., 122.)

626. The power and duty of the Commission to fix minimum rates in cases of complaints against rates as unjust, excessive, and unreasonable, reaffirmed.

627. A carrier should receive a greater compensation in the aggregate for hauling a carload of large tonnage than one of less tonnage, but, other things being equal, as a general rule, the rate per 100 pounds should be less in the former than in the latter case.

628. A rate prescribed for complainants' shipments in mixed carloads of chair stuff, spring-bed and mattress material (all wooden), minimum weight 25,000 pounds, of not exceeding 20 cents per 100 pounds from Chicago to Omaha and not exceeding 15 cents per 100 pounds from Mississippi River points to Omaha, resulting in a through rate from Detroit to Omaha via Chicago of 30 cents per 100 pounds and via Mississippi River points not through Chicago of 31½ cents per 100 pounds.

The Railroad Commission of Florida v. The Savannah, Florida and Western Railway Company et al. (5 I. C. C. Rep., 136.)

629. A decision adverse to the defendants having been rendered in this proceeding, and an application for rehearing having been filed, said application was, after due hearing, denied.

William H. Harvey v. The Louisville and Nashville Railroad Company. (5 I. C. C. Rep., 153.)

630. The action of the defendant in granting to members of the city council of New Orleans and the clerk of that body, on account of their official positions, free transportation as passengers over all or some portion of its interstate lines, violates the act to regulate commerce and is unlawful. Case of *Boston and Maine Railroad Company* approved and followed.

The Lincoln Creamery v. The Union Pacific Railway Company. (5 I. C. C. Rep., 156.)

631. On complaint of an unreasonable rate on butter in less than carloads from Lincoln, Kans., to Denver, Colo., it appears that defendant's line between those points runs through a sparsely populated country, furnishing com-

paratively little business to the carrier, and also that the rate is common to numerous towns of importance at an equal or greater distance from Denver, and is maintained by all the roads extending into that territory. *Held*, That the charge complained of is not shown to be unreasonable, nor does the evidence furnish sufficient reason for interfering with a rate established by a number of roads and common to many communities.

632. Comparison with rates in other localities where dissimilar conditions and modifying circumstances are found is not sufficient to establish the unreasonableness of the charges complained of. Where no discrimination is alleged as between points of production tributary to the same market, or on account of disproportionate rates on different kinds of traffic similar in character and volume, it must affirmatively appear that the charges assailed are unreasonable and ought to be reduced.

The Delaware State Grange of the Patrons of Husbandry v. The New York, Philadelphia and Norfolk Railroad Company et al. (5 I. C. C. Rep., 161.)

633. A decision adverse to the defendants having been rendered in this proceeding, and an application for rehearing having been filed, said application was, after due hearing, denied.

The Toledo Produce Exchange, The Cleveland Board of Trade v. The Lake Shore and Michigan Southern Railway Company, The Michigan Central Railroad Company, The New York Central and Hudson River Railroad Company, and The Boston and Albany Railroad Company. (5 I. C. C. Rep., 166.)

Edward Kemble v. The Lake Shore and Michigan Southern Railway Company, The New York Central and Hudson River Railroad Company, and The Boston and Albany Railroad Company.

634. The Commission is a special tribunal, whose duties, though largely administrative, are sometimes semijudicial, but it is not a court empowered to render judgments and enter decrees. The rule of estoppel by record, which is at all times technical in character and applies to the record of courts and proceedings before Federal officials whose acts are final, is not applicable to the complaint of Kemble, who had appeared before the Commission in a representative capacity as member of a committee of a complaining mercantile society in proceedings heretofore dismissed, which involved questions similar to those presented in the case now under consideration and brought by him as an individual.

635. Defendants offered to waive objection to depositions taken without notice on behalf of complainant, The Toledo Produce Exchange, if all the evidence taken in certain proceedings which involved questions similar to those herein should be treated and considered as evidence in this case, and the offer was accepted, but complainant's agent afterwards sought to rescind the agreement, although complainant had leave to put in whatever additional evidence it desired. *Held*, That the case should be considered according to the original agreement.

636. On complaints of unreasonable and discriminating rates from Chicago and other Western points to Boston, produced by the addition to rates from the same points to New York of a so-called arbitrary or differential of 10 cents on first class articles, 6 cents on goods of the second class, and 5 cents on other classes of freight, and which also involved the propriety of combination rates through intermediate points, the divisions of through rates between the carriers, and the relation of lighterage charges in New York Harbor to the rates in question. *Held*, That the question involved herein is the through rate as affected by the arbitrary differential, and divisions of the through rate accruing to the different roads need not be considered, nor are possible rate combinations properly comparable with the through rate, except for limited purposes. That it can make no difference to the shipper or the public how carriers adjust between themselves the expense of lighterage paid out of the through rate to New York. That the arbitrary differentials now charged are unlawful and should hereafter be made by adding a percentage to the New York rate on shipments included in the six classes of freight from Chicago and points east thereof and west of Buffalo to Boston and other New England points, and that the defendants and other carriers interested be allowed twenty days to show cause by answer why order should not issue commanding them to desist from charging said arbitrary differentials and requiring said rates to Boston and New England points to be made by adding to the New York rate an increase of 10 per cent thereof, and if no such answers be filed that such order be issued forthwith.

George Rice v. The Cincinnati, Washington and Baltimore Railroad Company, The Cincinnati, Indianapolis, St. Louis and Chicago Railway Company, The Chicago,

Rock Island and Pacific Railway Company, The Union Pacific Railway Company, The Central Pacific Railroad Company. (5 I. C. C. Rep., 193.)

George Rice v. The Cincinnati, Washington and Baltimore Railroad Company, The Ohio and Mississippi Railway Company, The St. Louis and San Francisco Railway Company, The Atchison, Topeka and Santa Fe Railroad Company, The Atlantic and Pacific Railroad Company, The Southern Pacific Company.

George Rice v. The Louisville and Nashville Railroad Company.

637. The Commission possesses no authority to compel carriers subject to its jurisdiction to provide any particular kind of cars or other special equipment, but, in the absence of adequate equipment freely afforded to all patrons alike, carriers should so adjust rates between those who can and those who can not furnish their own conveyance that in the relative charges to each there shall be no discrimination against the dependent shipper.

638. Disadvantage to the shipper of one product can hardly be predicated upon charges for transporting another product differing essentially in character from the former and widely dissimilar in the demands which it supplies. In such cases the rates themselves are insufficient to convict the carrier of unlawful discrimination; but the amount actually charged on one commodity may be of great importance in determining whether the charge on another commodity is reasonable or otherwise, especially when both have numerous points of resemblance in respect to the cost and hazard of transportation.

639. An allegation of unjust discrimination resulting from shipments of oil in tank cars owned by the shipper and low return rates on cotton-seed oil and turpentine in the same tanks, in connection with mileage paid for use of tank cars, can not be sustained without evidence showing mutuality of interest between the two classes of shippers or the payment of excessive car mileage.

640. Rulings based upon special facts and local conditions are not to be regarded as formulated precepts for general observance. A regulation which promotes fairness and relative equality where the carriage of oil is confined to tank and barrel shipments might be an unjust and oppressive requirement where four-fifths of the transportation is effected by another mode. The question in these cases of free carriage of barrels in petroleum shipments is not now decided.

641. In assuming for transportation purpose that a barrel of refined petroleum oil weighs 400 pounds and that a gallon of that commodity weighs 6.3 pounds when shipped in tanks, defendants use constructive or hypothetical weights so much out of proportion to actual weights that positive and measurable preference is constantly granted to the shipper by the tank method; and so far as that practice enables the tank shipper to secure the carriage of more pounds of freight for the same money than the shipper in barrels it subjects the latter to unlawful prejudice. When actual weights can not be ascertained without needless inconvenience, there is no serious objection to the use of estimated or constructive weights, provided the method of estimation works no inequality in its practical application to competing modes of conveyance.

642. The practice of allowing the tank shipper an arbitrary deduction of 42 gallons per tank car is wholly indefensible. Losses from leakage and evaporation are not less proportionally when the shipment is made in barrels, and no circumstance is discovered or reason advanced which justifies a concession of that nature to the shipper who furnishes his own conveyance, when no corresponding allowance is made to a rival shipper using the means of transportation provided by the carrier.

643. Charges of the Louisville and Nashville Railroad for the transportation of petroleum to several points on its lines are not only apparently unreasonable in themselves, but the existing disparity in rates to neighboring localities creates presumption of extortion in exacting the higher charges; moreover, as between tank and barrel shipments of petroleum, this adjustment of rates operates to the general advantage of the former mode of conveyance. Water competition to various points on its lines may furnish justification for rates to intermediate inland points somewhat higher than the railroad must accept to participate in business to the more remote locality favored with water carriage, but when charges for the shorter distance on these lines are three times those for the longer, the disparity is absurd and inexcusable. The lower figure must be unremunerative or the higher must be extortionate. This defendant ordered to revise and correct its charges on petroleum to many interior and local points on its lines, and make such reductions and modifications therein as will remove the gross disproportions and inequalities now found to exist.

644. The case against the Louisville and Nashville Railroad Company is retained for further evidence and argument on the question whether water competition at various points justifies a departure from the general requirement of the fourth section, and for such further investigation of its charges to intermediate and noncompetitive points, and direction in relation thereto, as may appear to be required. The cases against the other defendants are reopened for further evidence and argument in regard to the reasonableness of rates on petroleum products to the Pacific coast from points east of the ninety-seventh meridian. All the cases are held open for additional evidence and argument on the question of the free carriage of barrels in the transportation of petroleum oil; also for such further direction to the carriers as may appear necessary in regard to the extent that weights now assumed should be made relatively more favorable to the shipper in barrels. Amendment of pleadings allowed upon the application of any party and on such notice as the Commission may direct.
- E. M. Raworth *v.* The Northern Pacific Railroad Company, The Oregon Railway and Navigation Company, The St. Paul, Minneapolis and Manitoba Railway Company, The Union Pacific Railway Company, and The Southern Pacific Company. (5 I. C. C. Rep., 234.)
645. Carriers alleging justification of a departure from the "long and short haul" rule of the statute must in their answer to complaints clearly advise complainants of the facts and circumstances relied on as constituting such justification.
646. There is competition by rail over the Canadian Pacific Railway or by water around Cape Horn that justifies a departure from the "long and short haul" rule of the statute in the transportation of refined sugar from San Francisco to Fargo and through Fargo to St. Paul.
647. The "long and short haul" rule of the statute was intended to maintain and promote, and not to destroy or neutralize, natural commercial advantages resulting from location, and competition at St. Paul with sugar from the East refined in New York, although necessitating the prevailing low rates to St. Paul on sugar from the West refined at San Francisco, does not justify the greater charge on the latter to Fargo than to St. Paul.
648. Section 2 of the "act to regulate commerce," forbidding unjust discrimination, applies even in cases where a departure from the "long and short haul" rule of the statute is shown to be authorized, and the right, if established, of making the greater charge for the shorter haul does not justify a disparity in rates so great as to result in unjust discrimination.
649. The facts, that the rates to the longer-distance point can not be raised without a loss of the traffic involved, and that the rates to both the long-distance point and the short-distance point are not unreasonable in themselves, do not justify a disparity in such rates resulting in unjust discrimination as against the shorter-distance point.
650. The Northern Pacific Railroad Company is not exempt under its charter from the authority to regulate rates conferred on the Commission by the act to regulate commerce.
- The Anthony Salt Company *v.* The Missouri Pacific Railway Company. (5 I. C. C. Rep., 299.)
- The Anthony Salt Company *v.* The St. Louis and San Francisco Railway Company.
- Samuel Matthews *v.* The Union Pacific Railway Company, The Missouri Pacific Railway Company.
- Samuel Matthews *v.* The Atchison, Topeka and Santa Fé Railroad Company, The Chicago, Santa Fé and California Railway Company, The Gulf, Colorado and Santa Fé Railway Company.
- Edward E. Barton *v.* The Chicago, Rock Island and Pacific Railway Company.
651. The continued reduction of relative rates when brought about by the removal of artificial and unnatural differences is not undesirable, but where the difference results from dissimilar circumstances and conditions, and the true difficulty appears to be a real and natural advantage which the one region has and enjoys over the other, such continuing disturbances of rates ought not to be inaugurated, especially when the charges are commodity rates not shown to be unreasonable in themselves.
652. Salt requires and gets a commodity rate lower than class rates, and the roads should only be limited as to such lower rating by the rule that a commodity shall not be carried at such unremunerative rates as will impose burdens upon other articles transported to recoup loss incurred in carrying that commodity.

653. On complaints of relatively unreasonable and discriminating rates on salt from Kansas fields to various points as compared with rates to the same points from the salt fields of Michigan. *Held*, That any advantages which inure to Michigan salt manufacturers from rates to points in Iowa, Illinois, Missouri, and Nebraska are advantages arising from natural situation, and that the low rate to Missouri River points is influenced by conditions which are beyond the defendant's control, and existed before Kansas salt was discovered. *Held further*, That rates on salt to points south and southwest of Hutchinson, Kans., and St. Louis, Mo., do constitute undue preference in favor of Michigan as against Kansas salt, and that they should be readjusted by the Santa Fé company so that, while observing the law as to the long and short haul, the advantages of distance belonging to Kansas salt fields shall be given to them in any territory supplied by its lines which lies as near or nearer to Hutchinson than St. Louis.

The Eau Claire Board of Trade v. The Chicago, Milwaukee and St. Paul Railway Company, Chicago and Alton Railroad Company, Atchison, Topeka and Santa Fé Railroad Company, Chicago, Rock Island and Pacific Railway Company, Chicago, Burlington and Quincy Railroad Company, Chicago and Northwestern Railway Company, Chicago, St. Paul and Kansas City Railway Company, Missouri Pacific Railway Company, Great Northern Railway Company, Wabash Railroad Company, Chicago, St. Paul, Minneapolis and Omaha Railway Company, defendants, and The Musser Lumber Company and others, interveners. (5 I. C. C. Rep., 264.)

654. The doctrine that transportation charges should be proportioned to the distances between different points, where those distances are greatly dissimilar, has never been advocated by the railroads or recommended by the Commission. While distance is an ever-present element in the problem of rates, and not unfrequently a controlling consideration, the general practice of rate making is opposed to the principle of exact proportion, and there is no opportunity for its application under present conditions. Where all the distances brought into comparison are considerable, and the differences between them relatively small, there should be substantial similarity in the respective rates, unless other modifying circumstances justify disparity.

655. That rates should be fixed in inverse proportion to the natural advantages of competing towns with the view of equalizing "commercial conditions," as they are sometimes described, is a proposition unsupported by law, and quite at variance with every consideration of justice. Each community is entitled to the benefits arising from its location and natural conditions, and the exaction of charges, unreasonable in themselves or relatively unjust, by which those benefits are neutralized or impaired, contravenes alike the provisions and the policy of the statute.

656. On complaint of a relatively unreasonable rate on lumber from Eau Claire to various points on the Missouri River as compared with rates to the same points from La Crosse, Winona, and various other lumber-shipping points: *Held*, That the case must mainly be determined by comparing the rate in question with the rates from neighboring towns, similar in size, situation, and volume of competing traffic, and at approximately the same distance from common markets; that the rate complained of subjects Eau Claire to undue prejudice and disadvantage, and is unlawful; and that such rate should not exceed the rate from La Crosse and Winona by more than 2 cents per hundred pounds when, as at the time complaint was filed, the rates from those points is not over 11 cents per hundred, nor more than $2\frac{1}{2}$ cents per hundred pounds above the present rate of 16 cents per hundred from La Crosse and Winona.

657. A railroad can not be said to discriminate against a town which it does not reach and in whose carrying trade it does not participate; therefore, no case is made out against the carriers which were made parties at the request of the original defendant, because none of them have lines extending to Eau Claire. Preference, prejudice, and other like terms imply comparison, and the basis of comparison is wanting unless the rates compared are made by the same carrier. But these parties having defended and endeavored to justify the differential found excessive, while not technically subject to an order for its correction, have no more right to render it ineffectual than to openly disregard a direction clearly within the scope of the Commission's authority. The intervening defendant, the Omaha road, though serving the complaining town, need not, for reasons stated, be included in the order directing the reduced rate, but the case will be held open as against that company for such direction as may hereafter be required.

- L. N. Trammell, Allen Fort, and Virgil Powers, constituting and composing the Railroad Commission of Georgia, *v.* The Clyde Steamship Company, The South Carolina Railway Company, The Georgia Railroad and Banking Company, The Louisville and Nashville Railroad Company, and The Central Railroad and Banking Company of Georgia, lessees of The Georgia Railroad, The Richmond and Danville Railroad Company, and The Georgia Pacific Railway Company, lessees of The Central Railroad of Georgia. (5 I. C. C. Rep., 324.)
- Same *v.* The Ocean Steamship Company, The Central Railroad and Banking Company of Georgia, The Georgia Pacific Railway Company, and The Richmond and Danville Railroad Company, lessees of The Central Railroad of Georgia.
- Same *v.* The Cincinnati, New Orleans and Texas Pacific Railway Company, lessee of The Cincinnati Southern Railway, The Cincinnati Southern Railway Company, The East Tennessee, Virginia and Georgia Railway Company, The Central Railroad and Banking Company of Georgia, The Georgia Pacific Railway Company, and The Richmond and Danville Railroad Company, lessees of The Central Railroad of Georgia.
- Same *v.* The Western and Atlantic Railroad Company, The Louisville and Nashville Railroad Company, The Nashville, Chattanooga and St. Louis Railway Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, lessee of the Cincinnati Southern Railway, and The Cincinnati Southern Railway Company.
- Same *v.* The South Carolina Railway Company, The Georgia Railroad and Banking Company, The Louisville and Nashville Railroad Company, and The Central Railroad and Banking Company of Georgia, lessees of The Georgia Railroad, The Richmond and Danville Railroad Company, and The Georgia Pacific Railway Company, lessees of The Central Railroad of Georgia, The Atlanta and West Point Railroad Company, and The Western Railway Company of Alabama.
- Same *v.* The Louisville and Nashville Railroad Company, The Nashville, Chattanooga and St. Louis Railway Company, individually and as lessee of the Western and Atlantic Railroad, The Cincinnati, New Orleans and Texas Pacific Railway Company, lessee of The Cincinnati Southern Railway, The Cincinnati Southern Railway Company, The East Tennessee, Virginia and Georgia Railway Company, The Atlanta and West Point Railroad Company, and The Western Railway Company of Alabama.
- Same *v.* The Clyde Steamship Company, The South Carolina Railway Company, The Georgia Railroad and Banking Company, The Louisville and Nashville Railroad Company, and The Central Railroad and Banking Company of Georgia, lessees of The Georgia Railroad, The Richmond and Danville Railroad Company, and The Georgia Pacific Railroad Company, lessees of The Central Railroad of Georgia, The Atlanta and West Point Railroad Company, and The Western Railway Company of Alabama.
658. The fact of a receivership for a defendant carrier subsequent to complaint should not interfere with the progress of a proceeding brought merely for the purpose of railway regulation.
659. The phrase "common control, management, or arrangement for continuous carriage or shipment," in the first section of the act to regulate commerce, was intended to cover all interstate traffic carried through over all rail or part water and part rail lines. The receipt, successively, by two or more carriers for transportation of traffic shipped under through bills for continuous carriage over their lines is assent to a common arrangement for such continuous carriage or shipment, and previous formal arrangement between them is not necessary to bring such transportation under the terms of the law.
660. The total rate for through carriage over two or more lines, whether made by the addition of established locals, or of through and local rates, or upon a less proportionate basis, is the through rate that is subject to scrutiny by the regulating authority; how the rate is made is only material as bearing upon the legality of the aggregate charge, and how any reduction may be accomplished is matter for the carriers to determine among themselves.
661. The second, third, and fourth sections of the act to regulate commerce compared with provisions in English statutes. English decisions examined, and the frequent citation of such decisions to influence cases brought under greatly dissimilar statutory provisions in this country, without regard to differences in facts, time, extent of country, and methods of trade and transportation, considered and criticised.
662. The fourth section of the act to regulate commerce construed, and the principles laid down *In re* Petitions of Louisville and Nashville R. Co., 1 inters. Com. Rep., 278, 1 I. C. C. Rep., 31, reaffirmed, except the ruling therein

whereby carriers were permitted to judge for themselves in the first instance of what constitutes "rare and peculiar cases of competition between railroads which are subject to the statute, when a strict application of the general rule of the statute would be destructive of legitimate competition," which is hereby overruled.

663. The competition of carriers subject to the act to regulate commerce does not create circumstances and conditions which the carriers can take into account in determining for themselves in the first instance whether they are justified under the fourth section in charging more for shorter than for longer distances over their lines.
664. The competition of markets on different lines for the sale of commodities at a given point served by both lines does not create circumstances and conditions which the carriers can take into account in determining for themselves in the first instance whether they are justified under the fourth section in charging more for shorter than for longer distances over their lines. To determine the force and effect of such competition involves consideration of commercial questions peculiar to the business of shippers, such as advantage of business location, comparative economy of production, comparative quality and market value of commodities, all of which are entirely disconnected from circumstances and conditions under which transportation is conducted. Carriers can not create abnormal situations by making rates which equalize advantages and disadvantages of localities and thereupon claim justification for greater charges on shorter hauls on the ground that the lesser long-haul charges which accomplish such equalization are necessary to secure increase in traffic over their lines.
665. The carrier has the right to judge in the first instance whether it is justified in making the greater charge for the shorter distance under the fourth section in all cases where the circumstances and conditions arise wholly upon its own line or through competition for the same traffic with carriers not subject to regulations under the act to regulate commerce. In other cases under the fourth section the circumstances and conditions are not presumptively dissimilar, and carriers must not charge less for the longer distance except upon the order of this Commission.
666. When a carrier on complaint under the fourth section avers substantial dissimilarity in circumstances and conditions as justifying its greater charge for shorter hauls, it is concluded by its pleading and must affirmatively show that the circumstances and conditions of which it is entitled to judge in the first instance are in fact substantially dissimilar; but upon an application for relief under the fourth section proviso the carrier is not limited by such a rule of evidence, and may present to the Commission every material reason for an order in its favor. There seems to be no limitation upon the power of the Commission to grant relief under that proviso when, after investigation, the Commission is satisfied that the interests of commerce and common fairness to the carriers require that an exception should be made.
667. Complaints in cases No. 324 and No. 325 dismissed. In cases Nos. 314, 315, 316, 317, and 326, defendants ordered to cease and desist from charging more to shorter than to longer distance points mentioned in the complaints, or file applications for relief under the proviso clause of the fourth section and show cause thereon, within a time specified.

The Independent Refiners' Association of Titusville, Pa., and the Independent Refiners' Association of Oil City, Pa., v. The Western New York and Pennsylvania Railroad Company, The New York, Lake Erie and Western Railroad Company, The Delaware and Hudson Canal Company, The Fitchburg Railroad Company, and The Boston and Maine Railroad Company. (5 I. C. C. Rep., 415.)

Same v. The Western New York and Pennsylvania Railroad Company, The New York, Lake Erie and Western Railroad Company, and the Lehigh Valley Railroad Company.

Same v. The Pennsylvania Railroad Company and the Western New York and Pennsylvania Railroad Company.

668. It is the duty of the carrier to equip its road with the means of transportation, and, in the absence of exceptional conditions, those means must be open impartially to all shippers of like traffic.
669. Ownership of a car rented to a carrier and for the use of which the carrier pays a full consideration does not of itself entitle the owner to the exclusive use of such car, and, if the owner may in the contract of hire to the carrier stipulate for the exclusive use of the car, it must be upon such terms as shall not constitute an unjust discrimination against shippers of like traffic in cars owned by the carrier and who are excluded from the use of the car so hired.

670. Where oil is transported by the carrier both in barrels and tank cars and the use of the tank cars is not open to shippers impartially, but is practically limited to one class of shippers, the charge for the barrel package in barrel shipments in the absence of a corresponding charge on tank shipments, resulting in a greater cost of transportation to the shipper in barrels on like quantities of oil between like points of shipment and destination than to the tank shipper, is a discrimination against the former in favor of the latter, for which no legal justification has been shown in these cases.
671. The oil rates from Oil City and Titusville, Pa., to New York and New York Harbor points and Boston and Boston points, exclusive of the charge for the barrel package in barrel shipments, are not shown to be either unreasonable in themselves or relatively unreasonable as between these points.
672. An agreement for the pooling of traffic between a carrier by rail subject to the act to regulate commerce and a carrier by pipe line does not fall within the description of contracts prohibited by section 5 of that act.

In the matter of alleged Unlawful Charges for the Transportation of Coal by the Louisville and Nashville Railroad Company. (5 I. C. C. Rep., 466.)

673. Upon investigation had in a proceeding instituted by the Commission on its own motion, it appeared that the respondent had in force over its line to Nashville a special rate on coal when used for manufacturing purposes by persons named upon the manufacturers' lists prepared by the railroad company. These lists were furnished to dealers who, on selling coal to such manufacturers, issued certificates which entitled them to obtain a refund from the railroad company amounting to the difference between the regular and special rates. Pending investigation, the respondent discontinued the "manufacturers' rate," and put in force a new coal tariff to Nashville whereby coal, "run of mines, nut, and slack," is given a rate of \$1 per ton the year round, and "screened" coal a rate of \$1.15 per ton April to September, and for the remainder of the year a rate of \$1.40 per ton. The rate from the same mines to Memphis, a point affected by water competition for coal traffic, is \$1.40 per ton on all coal the year round, and respondent buys coal at the mines and sells it in the Memphis market. *Held,*
674. That the practice abandoned by the respondent common carrier of arbitrarily determining what persons should receive the so-called "manufacturers' rate" was a clear violation of the act to regulate commerce.
675. That the rate of \$1 per ton charged by respondent upon coal, "run of mines, nut, and slack," is not unreasonably low, nor disproportionate to the rate of \$1.40 per ton to Memphis; neither, in view of circumstances affecting coal traffic at Memphis, is a rate of \$1.15 on screened coal to Nashville relatively unreasonable as compared with the Memphis rate; but so long as the Memphis rate does not exceed \$1.40 rates on said kinds of coal from the mines to Nashville should not, during any portion of the year, exceed \$1 or \$1.15, respectively, and any reduction in the Memphis rate should be accompanied by proportionate reductions in rates on said different kinds of coal to Nashville.

The Merchants' Union of Spokane Falls v. The Northern Pacific Railroad Company and The Union Pacific Railway Company. (5 I. C. C. Rep., 478.)

676. Transportation by rail from eastern points to the "Pacific coast terminals," Portland, Tacoma, and Seattle, is affected by the competition, of controlling force and in respect to traffic important in amount, of water carriers reaching the same terminals, but such competition does not affect like transportation from said points to the city of Spokane, Wash. *Held, therefore,* That defendants are justified, by reason of such dissimilarity in circumstances and conditions, in maintaining higher rates on shipments of like property from said points for the shorter distance to Spokane than for the longer distance to said Pacific terminals. The competitive position and attitude of the Canadian Pacific Railway, a foreign carrier, considered in connection with existing water competition, but the separate effect of competition by the Canadian route not found or determined.
677. Class rates in effect upon the defendant lines and the lower commodity rates to their Pacific terminals examined and discussed. *Held,* That the only justification for a through rate less than an intermediate rate on the same article is the compulsion of rail carriers to accept the reduced compensation or suffer ocean rivals to perform the service, and where the pressure of this alternative is not felt there is no ground upon which the lower through charge can be excused. No article should be carried to terminal points on commodity rates which, if the class rates were imposed, would still seek rail rather than water transportation, and any violation of this rule is unjust discrimination against the intermediate town compelled to pay the higher class rate on the same article.

678. In the matter of carload and mixed carload rates, minimum weight of shipments entitled to car-load rates, and in all other respects, defendants are required to provide for and allow the same privileges, facilities, and advantages on shipments to Spokane as are provided or allowed on like shipments to Portland or other Pacific coast terminals.
679. "Blanket" class rates applying upon the Northern Pacific road for a distance of over 580 miles found relatively unreasonable: *Also held*, That rates to Spokane, the principal distributing center to which such blanket rates apply, are unreasonable in themselves. Defendants ordered to cease and desist from charging rates on property from Eastern points to Spokane, which materially exceed 82 per cent of class rates now in effect both to Spokane and Pacific coast terminals. Provision made for reopening the case if necessary and bringing in other carriers who may be affected by the order.
680. The Northern Pacific Railroad Company, notwithstanding certain provisions in its charter, is subject, like all other interstate carriers, to the authority conferred by Congress in the act to regulate commerce. Citing and affirming *Raworth v. Northern Pac. R. R. Co.*, 3 Inters. Com. Rep., 857; 5 I. C. C. Rep., 257.

The Potter Manufacturing Company v. The Chicago and Grand Trunk Railway Company, The Atchison, Topeka and Santa Fe Railroad Company, and the Southern Pacific Company. (5 I. C. C. Rep., 514.)

681. Continuance of a system of unjust rates can not be required or excused on the ground that parties have made investments and entered into the business affected thereby on the faith of assurances from carriers of their maintenance, although a change might work injury to the parties whom such rates had unduly favored.
682. An advantage resulting from just rates, coupled with the enterprise and outlay necessary to utilize them, is legitimate, and carriers should not undertake to deprive a shipper of this advantage by a change of such rates.
683. A rate on a particular class of goods, which is unreasonable or discriminatory in itself, is not justifiable on the ground that the same rate is given another (and in this case a competitive) class of goods, and as applied to the latter is liberal and advantageous.
684. The question as to correct weights and shipments, as between carrier and shipper, is one of fact to be determined in a manner just to both parties, and as to which the *ex parte* action of either can not conclude the other.
685. Taking into consideration the difference in value of the unfinished and finished cheap bedroom sets involved in this case, and the greater tonnage per car load which can be hauled of the former, and having in view the interests of both carrier and shipper, it is held that the rate on unfinished cheap bedroom sets, as shipped by complainant from Lansing, Mich., to Oakland, Cal., should not exceed 85 per cent of whatever rate may be adopted for such sets in a finished condition.
- P. H. Loud, jr., v. The South Carolina Railway Company, The Blackville, Alston and Newberry Railroad Company, The Charlotte, Columbia and Augusta Railroad Company, The Carolina, Cumberland Gap and Chicago Railway Company, The Virginia Midland Railway Company, The Barnwell Railroad Company, The Richmond and Danville Railroad Company, The Port Royal and Western Carolina Railway Company, The Pennsylvania Railroad Company, and The North Carolina Railroad Company.* (5 I. C. C. Rep., 529.)
686. The question whether property of a carrier in the hands of a receiver appointed after the matters complained of before this Commission are alleged to have occurred is subject to an order of reparation issued by this Commission, is one to be presented to and disposed of by the courts on proceedings therein for the enforcement of such order.
687. Rates should bear a fair and reasonable relation to the antecedent cost of the traffic as delivered to the carrier and to the commercial value of such traffic (*Delaware State Grange of Patrons of Husbandry v. New York, P. and N. R. Co.*, 3 Inters. Com. Rep., 561; 4 I. C. C. Rep., 605), but it is incumbent on parties invoking this rule to make satisfactory and reliable proof as to such antecedent cost and commercial value.
688. In passing upon the reasonableness of rates, the question whether they afford the carrier a proper return for the service rendered is to be considered as well as the result of the business to the shipper or producer of the traffic.
689. Where a special service is required of the carrier, such as rapid transit and speedy delivery in cases of perishable freight, a higher rate than for the carriage of ordinary freight is warranted, and if a carrier charging a rate based on such special service fails to render it, to the damage of the shipper,

and without legal excuse, the remedy of the latter would seem to be by a proper proceeding in a court of law.

690. A reduction in rates by a carrier is not *per se* evidence that the former rates were unreasonable, as such reduction may, as in the present case, be accounted for because of a decrease in cost of transportation and an increase in the volume of the traffic to which such rates apply.

691. The rates on melons complained of in this case having been materially reduced by the defendant carriers since the commencement of this proceeding, and there being no satisfactory evidence that the rates so reduced are unreasonable or excessive, the complaint is dismissed.

The Board of Trade of Chattanooga *v.* The East Tennessee, Virginia and Georgia Railway Company, The Norfolk and Western Railroad Company, The Old Dominion Steamship Company, The Western and Atlantic Railroad Company, The Central Railroad and Banking Company of Georgia, The Georgia Railroad Company, The Ocean Steamship Company of Savannah, The South Carolina Railway Company, The Clyde Steamship Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, The Baltimore and Ohio Railroad Company, The Central Railroad Company of New Jersey, The Nashville, Chattanooga and St. Louis Railway Company, The Pennsylvania Railroad Company, The Pennsylvania Company, The New York, Lake Erie and Western Railroad Company, The New York and New England Railroad Company, and The Delaware and Hudson Canal Company. (5 I. C. C. Rep., 546.)

692. Upon complaint alleging that rates on traffic from New York and other Atlantic seaboard points to Chattanooga are unreasonable and greater for the shorter distance to Chattanooga than for the longer distance over the same line in the same direction to Memphis and Nashville. *Held*, That defendants are justified by the existence of water competition of controlling force in charging less on such traffic for the longer distance to Memphis, but that no such competition exists for such traffic to Nashville, and any greater charge for the transportation of like kind of property from said seaboard points for the shorter distance to Chattanooga than for the longer distance through Chattanooga to Nashville is in violation of the fourth section of the act to regulate commerce. Defendants ordered to cease and desist from making such greater charge to Chattanooga, with leave to file application for relief under the proviso clause of the fourth section within a specified time. *Ga. R. R. Com. v. Clyde S. S. Co. et al.*, 4 Inters. Com. Rep., 120; 5 I. C. C. Rep., 324, cited and affirmed.

693. One transportation line can not be said to meet the competition of another transportation line for the carrying trade of any particular locality, unless the latter line could and would perform the service alone if the former did not undertake it.

694. When great disparity exists between charges which are lower to competitive than to intermediate points much less remote, the inference is irresistible that the lower rate must be unremunerative upon any theory, or else the larger rate gives an unwarranted return for the service rendered.

The Chamber of Commerce of Minneapolis, Minnesota, *v.* The Great Northern Railway Company, The Chicago, Milwaukee and St. Paul Railway Company, The Northern Pacific Railroad Company, The Chicago and Northwestern Railway Company, The Chicago, St. Paul, Minneapolis and Omaha Railway Company, The Minneapolis, St. Paul and Sault Ste. Marie Railway Company, The St. Paul and Duluth Railroad Company individually and as lessee of the Duluth Short Line Railway, The Eastern Railway Company of Minnesota, defendants, and the Chamber of Commerce of Milwaukee, The Interior Wisconsin Millers' Association, The Eastern Minnesota Millers' Association, The Southern Minnesota Millers' Association, The Board of Trade of Duluth, Minnesota, The Jobbers' Union of Duluth, Minnesota, The Chamber of Commerce of Duluth, Minnesota, intervenors. (5 I. C. C. Rep., 571.)

695. When a local rate from a given point is alleged unreasonable, but it appears from the record that such local rate is also a proportion of through rates from that point, and as such is the real subject of controversy, the complaint should be directed against the aggregate through rate, not the share received by any initial carrier, and all the carriers composing the through line are necessary parties.

696. A town favorably situated with respect to one through route, but competing in a common market with another town more favorably located on another through route, should not have a reduction of the local rate over roads connecting the two through routes for the purpose of overcoming the natural advantage which the latter competing town enjoys.

697. A milling town possessing great natural, acquired, and improved advantages for the carrying on of that industry, and favorably situated in point of distance to a large grain-producing region, is entitled to the benefits arising from its location, and carriers of grain to that point and to a competing town considerably more remote from points of production, and in other particulars less advantageously located, are not justified in making rates on grain to the competing towns which destroy the advantage the former is entitled to enjoy.

698. Rates on wheat from points in North and South Dakota to Minneapolis as compared with the rates charged over considerably greater distances from the same points to Duluth and adjacent Lake Superior ports subject Minneapolis millers to undue and unreasonable prejudice and disadvantage. Defendants ordered to adjust their rates on wheat from said points to Minneapolis and Duluth upon the basis of distance over nearest practicable routes.

John W. S. Brady and George T. Parkhurst, partners, trading under the firm name of J. Parkhurst & Co., *v.* The Pennsylvania Railroad Company, The Pennsylvania Company, The Pittsburgh, Cincinnati and St. Louis Railway Company; and John Henry Nicolai, trading as "Eagle Oil Works," *v.* The Pennsylvania Railroad Company, The Pennsylvania Company, and The Pittsburgh, Cincinnati and St. Louis Railway Company. (5 I. C. C. Rep., 635.)

A decision adverse to the defendants having been rendered in this proceeding and an application for rehearing having been filed, said application was, after due hearing, denied.

The Gerke Brewing Company *v.* The Louisville and Nashville Railroad Company; The Kentucky Central Railway Company; The Norfolk and Western Railroad Company. (5 I. C. C. Rep., 596.)

699. The rule expressed by the fourth section that distance shall ordinarily limit the adjustment of rates is not rendered inoperative by the existence at one point of converging lines subject to the act, for the law applies to each of these lines, and neither can put in rates to that point which are lower than shorter-distance charges on its line, until, upon a showing of special considerations grounded in justice to its patrons and itself, it obtains permission from the regulating authority so to do. This principle applies both to lines between the same points and to lines reaching the same destination from different points of consignment.

700. Competition with carriers not subject to the statute is based upon natural causes and plain conditions, but the legitimate force of competition with carriers subject to the act depends upon compliance with the law by each of the competitors and the special circumstances and primarily indefinite conditions in each particular case. Georgia Railroad Com. *v.* Clyde S. S. Co., 4 Inter. Com. Rep., 120; 5 I. C. C. Rep., 324, cited and affirmed.

701. When rates from any cause are made greater for shorter than for longer distances the difference between such rates must in no instance be unreasonable.

James & Abbott *v.* The Canadian Pacific Railway Company; The Maine Central Railroad Company; The Boston and Maine Railroad Company. (5 I. C. C. Rep., 612.)

702. The statute provides that "no complaint shall at any time be dismissed because of the absence of direct damage to the complainant," and defendants are therefore not entitled to a dismissal of the complaint on the ground that the petitioners, being merely commission merchants, can sustain no direct or material damage under the rates in question.

703. When water competition is alleged to justify rates in any case under the statute the carrier must affirmatively show by proof which does more than create a presumption and which clearly establishes that such competition is a controlling factor in the transportation of traffic important in amount from the point in question.

704. Manufacturing industries should not be deprived, through a carrier's adjustment of relative rates, of advantages resulting from their favorable location in respect of cost of raw material supplied from a common source, or of distance to the common market for the finished product.

705. A departure from equal mileage rates on different branches or divisions of a road is not conclusive that the rates are unlawful, but the burden is on the company making such departure to show its rates to be reasonable when disputed. Citing Logan *v.* C. & N. W. R. Co., 2 Inter. Com. Rep., 431; 2 I. C. C. Rep., 604.

706. When the reasonableness or relative reasonableness of charges is challenged, every material consideration which enters into the making of such charges,

including the apportionment thereof to connecting roads in a through line, is pertinent to the inquiry.

707. The "drive" of shingle logs down rivers which flow past the place of cut in Maine to a seaport in Canada where shingle mills are located, and from which the product may go by sea to market ports, affects shingle traffic from competing mills located along these rivers at a place in Canada and a place in Maine, but operates with less force at the latter point. The rail rate from the Canadian mill to market being fixed with especial reference to the effect of the log drive to and water competition for shingle traffic from the seaport, the rate from the Maine mill should be made upon the same basis.

708. Defendants ordered to restore the relation of rates on shingles to Boston which they established after the filing of complaint herein, but soon after discontinued, to wit, a rate from Fort Fairfield in Maine of not exceeding 6½ cents above the rate in force from Fredericton, in Canada. Complainant's claim for reparation denied.

Charles H. Brownell *v.* Columbus and Cincinnati Midland Railroad Company. (5 I. C. C. Rep., 638.)

W. R. Schrievers and 52 others, claiming to be large dealers in eggs.

Jacob Guagi and 295 others, claiming to be small dealers in eggs.

Clark A. Post and 421 others, claiming to be farmers and, among other things, producers of eggs and selling eggs to local dealers in small quantities, intervenors as complainants.

The Pittsburg, Cincinnati and St. Louis Railway Company, the Cleveland, Cincinnati, Chicago and St. Louis Railroad Company, the Baltimore and Ohio Railroad Company, intervenors as respondents.

709. Unreasonable or unjust classification of a commodity is not shown by evidence of lower classification for articles widely dissimilar in the elements of risk, weight, bulk, value, or general character. The proper method of comparison is the classification accorded by the carriers to analogous articles.

710. When an article moves in sufficient volume and the demands of commerce will be better served, it is reasonable to give a lower classification for carloads than that which is applied to less than carload quantities, but the difference in such classification should not be so wide as to be destructive to competition between large and small dealers. *Thurber v. New York Cent. and H. R. Co.*, 2 Inters. Com. Rep., 742; 3 I. C. C. Rep., 473, cited and reaffirmed. The justice of the claim for a lower rating on car-load lots can only be determined upon the facts in each case.

711. When on complaint of a carload shipper unjust discrimination is alleged to result from equal rates on carload and less than carload quantities of the same commodity, the burden of proof is upon the complainant.

712. Upon complaint alleging unjust discrimination against carload shippers of eggs in favor of shippers in less than carloads, it appeared that under the "official classification" eggs take second-class rates for carload or less quantities; that the commodity is carried in refrigerator cars; that for carload shipments ice to the amount of 6,000 pounds is furnished by the carrier without extra charge; that less than carload shipments are taken from local stations in "pick-up" cars to distributing points and forwarded in carloads to New York and other large markets; that notwithstanding the special facilities afforded to small shipments by the carriers the large dealers control 83 per cent of the traffic. *Held*, upon all the facts in the case, that no unjust discrimination results to the carload shipper from the equal rating of carloads and less than carload lots and the special service rendered in gathering and forwarding small shipments, and the complaint should therefore be dismissed.

713. Power of concentrated business interests to force concessions in transportation rates which operate to the disadvantage of the general public discussed.

George Rice *v.* The St. Louis Southwestern Railway Company and the St. Louis Southwestern Railway Company of Texas. (5 I. C. C. Rep., 660.)

George Rice *v.* The Baltimore and Ohio Southwestern Railroad Company and The Columbus, Hocking Valley and Toledo Railway Company.

714. Some of the grievances alleged in the complaint were subsequently removed by defendants as a result of the Commission's order in other cases. The other charges were denied by the defendants in their verified answers, and that denial was fortified by the positive testimony of witnesses. The petitioner did not appear at the hearing, though duly notified thereof, and

offered no proof in support of the information and belief upon which his allegations were made. *Held*, That as to these charges the complaint must be dismissed.

The Tecumseh Celery Company v. The Cincinnati, Jackson and Mackinaw Railway Company and the Wabash Railroad Company. (5 I. C. C. Rep., 663.)

715. When a carrier fails to answer a complaint filed under section 13 of the act to regulate commerce the Commission will take such proof of the facts as may be deemed proper and reasonable and make such order thereon as the circumstances of the case appear to require.

716. For that portion of its line over which the Western classification is in force the Wabash road should class celery with cauliflower, asparagus, lettuce, green peas, string beans, oyster plant, egg plant, and other vegetables enumerated in Class C of that classification, rather than with berries, peaches, grapes, and other fruits specified in Class III thereof, and the defendants should transport celery from Tecumseh to Kansas City at no higher rate per carload than they charge for carrying a carload quantity of any of said other vegetables named in Class C aforesaid; and mixed carloads of celery and cauliflower or other vegetables specified in said Class C of the Western classification should be transported by defendants from Tecumseh to Kansas City at no higher rate per carload than they charge for carrying a carload quantity of either of said vegetable articles embraced in that class.

The Board of Trade of Troy, Alabama, v. The Alabama Midland Railway Company, The Central Railroad and Banking Company of Georgia and H. M. Comer and others, the receivers thereof, The Savannah, Florida and Western Railway Company, The Kansas City, Fort Scott and Gulf Railroad Company, The Kansas City, Memphis and Birmingham Railroad Company, The Louisville and Nashville Railroad Company, The Mobile and Ohio Railroad Company, The East Tennessee, Virginia and Georgia Railway Company, The Western Railway of Alabama, The Missouri Pacific Railway Company, The Wabash Railroad Company, The Sioux City and Pacific Railroad Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, The Illinois Central Railroad Company, The Evansville and Terre Haute Railroad Company, The Jeffersonville, Madison and Indianapolis Railroad Company, The Louisville, New Albany and Chicago Railway Company, The Clyde Steamship Company, The Ocean Steamship Company of Savannah, The Providence and Stonington Steamship Company, The New York and Texas Steamship Company, The Metropolitan Steamship Company, The Citizens' Steamboat Company, The Hartford and New York Transportation Company, The Grand Trunk Railway Company of Canada, The New Haven Steamboat Company, The People's Line Steamers, The Maine Steamship Company, The New York Central and Hudson River Railroad Company, The Central Vermont Railroad Company, The Bridgeport Steamboat Company, The Norwich and New York Transportation Company, The Canadian Pacific Railway Company, The Minneapolis, St. Paul and Sault Ste. Marie Railway Company, The Housatonic Railroad Company, The Central Railroad Company of New Jersey, The Boston and Albany Railroad Company, The Boston and Maine Railroad Company, The New York and New England Railroad Company, The Old Colony Railroad Company, The Fitchburg Railroad Company, The Maine Central Railroad Company, The Connecticut River Railroad Company, The Pennsylvania Railroad Company, The Philadelphia and Reading Railroad Company, The Baltimore and Ohio Railroad Company, The Providence and Springfield Railroad Company, The Cheshire Railroad Company, The Concord and Montreal Railroad Company. (6 I. C. C. Rep., 1.)

717. The fact that the property and affairs of a carrier have been placed by a United States court in the hands of a receiver does not affect the jurisdiction of this Commission under a complaint charging such carrier with violations of the act to regulate commerce.

718. The continuity of the carriage of freight over a line formed by two or more roads is not broken in fact and can not be broken in law by the charge of a local rate by one (or more) of such roads as its proportion of the through rate.

719. The successive receipt and forwarding in ordinary course of business by two or more carriers of interstate traffic shipped under through bills for continuous carriage over their lines is assent to a "common arrangement" for such carriage within the meaning of the act to regulate commerce without previous express agreement between them, and the obligations imposed by the statute can not be evaded by the demand of the local charge for the haul over its own road by one or more of such carriers or by the declaration on the part of one or more of said carriers that as to the transportation over its road it is a local and not a through carrier. (Reaffirming the doctrine laid down in *Georgia R. Com. v. Clyde SS. Co.*, 4 Inters. Com. Rep., 120; 5 I. C. C. Rep., 324.)

720. A local rate which presumably is adopted as covering both the initial and final expense of a local haul is *prima facie* excessive as part of a through rate over a through line composed of two or more carriers.
721. Where a proportion of a through rate for part of a through haul is greatly disproportionate to the balance of the through rate, the knowledge of the circumstances and conditions (if any) justifying such disproportionate rate being peculiarly in the possession of the carrier, the burden is on the carrier to make proof of such justifying circumstances and conditions.
722. The facts, that one city is much larger and has more important and extensive business interests than another and has been treated by the carriers in making rates to surrounding points as a "trade center" is no justification for a continuation of discriminatory rates in favor of such city. The object of the act to regulate commerce was to eradicate the existing system of rebates and unjust discriminations in favor of particular localities, special enterprises, and favored individuals.
723. Unjust discrimination as between localities or individuals can not in the nature of things be essential to the business prosperity of the carrier, and it is no valid objection to the correction of unlawful rates to one point that it involves a like correction as to other points.
- Phelps & Co. v. The Texas and Pacific Railway Company. (6 I. C. C. Rep., 36.)
724. The rates which carriers are required by the sixth section of the statute to publish, file, and adhere to without deviation cover not merely the carriage, but services rendered in receiving and delivering property as well.
725. The lien of carriers upon freight for charges earned is satisfied by the payment of rates for their services which they are lawfully entitled to demand, and a guaranty executed to a carrier by consignees or third parties, which might be construed to enable the carrier, in consideration of freight delivery before settlement of transportation charges, to exact for services rendered in moving and delivering the freight whatever it chooses to demand, can not be used by the carrier to force payment of charges in excess of those it would be entitled to collect or receive if previous freight delivery had not been made.
726. The interstate-commerce act does not recognize indefinite or uncertain transportation charges; the idea of unequal compensation for like service, or discrimination in the treatment of persons similarly situated, is repugnant to every requirement of that law, and a party to an interstate shipment can not be excluded by the carrier from privileges afforded to other patrons in the same locality because of his refusal to pay excessive freight charges, even though an agreement to subsequently refund the excess should accompany the demand.
727. When actual weights of cotton shipments can not be ascertained without great inconvenience to the shipper or carrier, and when transportation charges are promptly adjusted by the carrier upon the basis of actual weights furnished by the consignee, a practice of billing the cotton at a proper estimated weight per bale should not be deemed unlawful.
728. The retention of an overcharge has all the effect of extortion and unjust discrimination against the person from whom its payment has been required, and when the refund of an excessive charge has been unnecessarily delayed for a considerable period the officials responsible therefor become fairly chargeable with willful intention to violate the law.

The Independent Refiners' Association of Titusville, Pennsylvania, and the Independent Refiners' Association of Oil City, Pennsylvania, v. The Pennsylvania Railroad Company and The Western New York and Pennsylvania Railroad Company. (6 I. C. C. Rep., 52.)

729. A decision adverse to the defendants having been rendered in this proceeding, and an application for rehearing having been filed by the Pennsylvania Railroad Company, said defendant was allowed to take testimony by deposition with reference to a particular finding in the report and opinion of the Commission.

The F. Schumacher Milling Company and its successor, The American Cereal Company, v. The Chicago, Rock Island and Pacific Railway Company, defendant, and The Chicago, Burlington and Quincy Railroad Company, The Hannibal and St. Joseph Railroad Company, The St. Louis, Keokuk and Northwestern Railroad Company, The Kansas City, St. Joseph and Council Bluffs Railroad Company, The Chicago, Milwaukee and St. Paul Railroad Company, The Atchison, Topeka and Santa Fé Railroad Company, intervenors. (6 I. C. C. Rep., 61.)

730. The fact that different rates and classifications are in force in different sections of the country will not of itself warrant an extension of the lower

rate and classification to the section where the higher rate and classification are applied. There must be proof of unlawful discrimination or disadvantage, or of unreasonably high rates, to procure an order directing changes in classification.

731. Cost of service is only one of the elements to be considered in determining proper classification and relative rates for different articles. While the difference in cost to the carrier in transporting cereal products and flour is not in itself sufficient to warrant a higher classification upon cereal products, these products range higher in value than flour, and in the matter of volume of traffic afforded there is a very wide difference in favor of flour; and there are other conditions compelling a low rate upon flour which do not apply in the transportation of cereal products. It appears, moreover, that the complaining company controls the production of half the cereal products manufactured in this country and, under the present classification and rates, is an active competitor of other manufacturers of cereal products whose mills are located nearer to the points of destination involved in this case.
732. When an article of traffic does not move on account of burdensome rates, and the carrier is hauling a considerable number of empty cars in the direction such article would naturally move if accorded a lower rate, the carrier may be justified in carrying at a rate sufficient to induce the movement of such traffic, provided no extra or additional charge is in consequence put upon other articles carried; but the fact that freight will furnish return loads for empty cars is not a reason for the reduction of rates on such freight when it does not appear that the rates are unreasonable.
733. A mixed carload rate for cereal products, or for cereal products and flour, that would have the effect of throwing out of the trade many competitors of complainant who manufacture only certain kinds of cereal products, and of centralizing the business in the hands of one or more dealers, should not be granted when without it no wrong is done to anyone, and the market is open to all competitors. To obtain the abrogation of a rule in a classification denying a mixed carload rate upon specified articles the rule should be shown unreasonable, unfair, or unjustly discriminative.
734. The complaining company has shown no reason why roads using the Western classification should adopt the official classification as to cereal products. Neither is there sufficient evidence in this case to justify an order directing the defendants to establish the mixed carload rate prayed for in the complaint. But this will not preclude the filing of another complaint based on other grounds, and raising the question of unreasonable or relatively unreasonable rates on cereal products.

Blanton Duncan v. The Atchison, Topeka and Santa Fé Railroad Company, The Atlantic and Pacific Railroad Company, and The Southern California Railroad Company, known as the Santa Fé System. (6 I. C. C. Rep., 85.)

Blanton Duncan v. The Southern Pacific Company and The Louisville and Nashville Railroad Company.

735. The remedy of a party for injury to goods shipped resulting from delay, detention, loss, breakage, rotting, or other deterioration or damage not attributable to a violation of any provision of the act to regulate commerce is by appropriate action in the courts.
736. Where a contract is made with a shipper by a carrier, member of a through line, for shipment of goods over the line at a less than the published lawful rate charged shippers in general, it is not a violation of the act to regulate commerce for the delivering carrier to exact payment of the full lawful rate before delivery. Where, however, the shipper did not enter into the contract willfully for the purpose of securing a rate which he knew, or, by the exercise of reasonable diligence might have known, to be illegal, but was an innocent party to it, and made the shipment on the faith of the rate named, the courts seem inclined to hold (and it is a matter for their determination) that justice to the shipper requires that the goods be delivered on payment by him of the amount specified in the contract.
737. There is no necessary connection or relation between the rates on traffic of the same kind or class transported between the same points in opposite directions over the same road or line, and the fact that such rate in one direction is materially higher than that in the opposite direction does not, as in case of hauls over the same line in the same direction, establish *prima facie* the unreasonableness of the higher rate. This is especially true where the hauls are of great length.
738. The rate charged on "household goods" will not be declared unlawful on the mere fact that as a condition of granting them the defendants require the

shipper to release all claim for damages in case of loss to the amount of \$5 per 100 pounds, or \$1,000 per car load of 20,000 pounds, there being no proof showing that such rates are unreasonable in view of said limitation. In cases of loss the shipper's remedy is at law, and the question of the reasonableness or validity of a contract limiting the carrier's liability is to be determined in the courts on the facts in each case.

739. Unless within the authorized exceptions to the general rule of the statute, discriminations in charges upon like shipments of the same commodities based solely upon the purpose or "business motive" of the shipper are unlawful, whether effected directly or indirectly by methods of classification.
740. Under the Western classification and tariff there are two west-bound carload rates from Mississippi River points to Pacific coast terminals on goods termed "emigrants' movables" (including "household goods"), one a general class rate and the other designated a "commodity" rate, and less than the general rate; the latter rate is published as being open to "intending settlers only," but in practice it is given to shippers indiscriminately, and does not appear to be unreasonable in itself. *Held*, (1) That there is neither propriety in, nor necessity for, retaining in the classification and tariff either the two rates or the statement in connection with the commodity rate that it is open to "intending settlers only," as their intention can only serve to mislead the public and afford opportunity for the practice of favoritism and unjust discrimination as between shippers; (2) that the west-bound rate on "emigrants' movables" (including "household goods") from Louisville to Los Angeles should not be in excess of the amount of said commodity rate thereon.
741. While the circumstances and conditions in respect to the work done by the carrier and the revenue earned are dissimilar in the transportation of freights in carloads and less than carloads, and a lower rate on carloads than on less than carloads is, therefore, not in contravention of the statute, yet the difference between the two rates must be *reasonable*.
742. The agreement of the Transcontinental Association on file with the Commission is not on its face a "contract or agreement or combination" for the "pooling of freights" or "division of earnings" between different and competing railroads such as is declared unlawful by section 5 of the act to regulate commerce.

Thos. V. Cator v. The Southern Pacific Company and The Union Pacific Railway Company. (6 I. C. C. Rep., 113.)

743. Under the statute the defendants had a legal right to withhold or put into effect an open excursion rate to Omaha, and such right was not affected by the fact that open excursion rates, lower than regular rates of fare, had been in force over their connecting roads during the month previous. Comparison of the rates charged to complainant and others in July for transportation from San Francisco to Omaha and return with reduced excursion rates charged for the transportation of persons from San Francisco to Chicago and Minneapolis in June of the same year does not of itself present a discrimination or preference which the act to regulate commerce empowers this Commission to correct.

C. O. Morrell, complainant, v. The Union Pacific Railway Company, The Oregon Short Line and Utah Northern Railway Company, The Oregon Railway and Navigation Company, defendants. (6 I. C. C. Rep., 121.)

744. Rates maintained and which may be reasonable under the conditions existing in one section or part of the country afford no safe criterion by which to measure reasonable charges in other localities where the expense of operating a road and other conditions affecting transportation are widely different.
745. Rates and charges in force on lines of rival companies or on different branches or lines of the same company are entitled to consideration in connection with the question of reasonable charges for transportation services rendered under like conditions.

A. S. Newland, T. W. Hauschild, Walter Reeder, complainants, v. The Northern Pacific Railroad Company, The Union Pacific Railway Company, The Oregon Short Line and Utah Northern Railway Company, The Oregon Railway and Navigation Company. (6 I. C. C. Rep., 131.)

746. It is the right of shippers to have their goods carried and the duty of common carriers to receive and forward freights by the least expensive routes at reasonable through rates.
747. Where there were two routes from the place of shipment to the place of destination, one much longer and much more expensive to operate than the other, the longer and more expensive being operated by one, while the more direct

and less expensive route was over continuous lines operated by more than one common carrier: *Held*, That the rate must be reasonable for the transportation by the shorter and less expensive route.

748. Where the roads and branches of two companies extend to and penetrate a wheat-producing district, from which they make a joint rate for distances of 480 miles, and each company makes the same rate separately from the same district, one for distances of 450 and the other for distances of 650 miles over their respective lines to the same destination: *Held*, That it may be fairly assumed that the rates so jointly and separately made are reasonably remunerative and profitable: *Held further*, That what is reasonable compensation for this longer and more expensive branch-line service is excessive for the shorter distance of 311 miles over a less expensive route from the same district to the same destination.
749. The same rate over a district so extensive denies to the producer nearer the market the advantages of his location, for which he receives no compensation in the fact that such rate was established to enable a railroad company to sell its lands more distant from markets at better prices.
750. The practice of making one rate on the same product over a large district is only justifiable under special and exceptional circumstances, and is not to be encouraged when the difference in the transportation expense from the various parts of such district is considerable and substantial.
751. That railroad investments may be as secure as other property, the reasonable rates should be liberal until earnings are sufficiently large for a fair return on actual expenditure.
752. Where the market price yields but a scant return for the labor and expense of production, the cost of transportation needs to be as moderate as may be consistent with justice to the carrier.
753. Where a road or system of roads leased and made the road of another company a part of a system: *Held*, That the agreed rental can not be accepted as the amount which the leased property must earn and the lessee may retain before any reduction can be made in the rates over the leased lines.
754. Where two companies or railroad systems stipulated for a division of traffic and agreed that when one party carried traffic belonging to the other but one-half of the charges should be retained for the transportation service: *Held*, That in the light of this arrangement in connection with the other facts of the case some reduction was warranted.

Alanson S. Page, Cadwell B. Benson, and Charles Tremain, complainants, *v.* The Delaware, Lackawanna and Western Railroad Company, The New York Central and Hudson River Railroad Company, The Michigan Central Railroad Company, defendants. (6 I. C. C. Rep., 148.)

755. Where it appears that a complainant has invoked the aid of the law for the purpose of securing what he, with the acquiescence of the carrier, had previously obtained in apparent contravention of the law, such acquiescing carrier will not be held entitled to plead violations of the law by complainant in bar of a decision on the merits, nor will the individual interests of the complainant be taken into consideration; but the Commission will examine the evidence and make such report thereon as, under the provisions of the law, the rights of other shippers and the public generally may require. If, independently of any action or interest of complainants, the conduct of defendants with reference to the transportation which is the subject of the proceeding is shown by the evidence to be unlawful, it is the duty of the Commission to execute and enforce the statutory provisions applicable thereto.
756. Upon consideration of the great reduction which has taken place in the value of window shades, the arbitrary increase of shade classification by the carriers during the progress of this proceeding, and all the other facts and circumstances herein which pertain to the rights of shade shippers and consignees generally, and of purchasers of that article of household necessity: *Held*, That the classification of window shades as first class in the Official Classification has become unjust, and that the legal duty of defendants to so classify traffic and fix charges thereon that the burdens of transportation are reasonably and justly distributed among the articles they carry requires them to reduce their classification of window shades to the class which, under the Official Classification, is now applied to "window hollandes and shade cloth, plain, uncut, and undecorated."

Rhode Island Egg and Butter Company, The W. W. Whipple Company, George M. Griffin *v.* The Lake Shore and Michigan Southern Railway Company, Michigan Central Railroad Company, New York Central and Hudson River Railroad Company, Boston and Albany Railroad Company, New York, New Haven and Hartford Railroad Company. (6 I. C. C. Rep., 176.)

757. A shipper should not be subjected to unnecessary restrictions as to the kind of case or package he shall use.
758. A rate which may be reasonable when applied to the transportation of egg cases as a disconnected service may be unreasonable if the carriage of returned cases at favorable rates is in fact a special service, the discontinuance of which would unduly burden the business of shipping eggs to points of sale.
759. Upon complaint of unreasonable classification and rating on returned empty egg cases from Providence, R. I., to Chicago, Ill., Burlington, Iowa, and other Western points: *Held*, That the evidence presented is insufficient to enable the Commission to determine the question. *Held further*, That the defendants and other carriers concerned should be allowed time to consider whether shippers generally are not unduly prejudiced by the increased rating complained of, and take or refrain from taking action accordingly, and if the carriers fail to take satisfactory action, that the complainants and any other interested shipper or consignee should have leave, after a specified time, to ask to have the case reopened; and thereupon such other direction be given as will serve to bring in necessary parties defendant, by amended or supplemental complaint or otherwise, as may appear to be required.

The Freight Bureau of the Cincinnati Chamber of Commerce v. The Cincinnati, New Orleans and Texas Pacific Railway Company *et al.* (6 I. C. C. Rep., 195.)

The Chicago Freight Bureau v. The Louisville, New Albany and Chicago Railway Company *et al.*

760. If railway companies engaged in the transportation of traffic from one territory voluntarily enter into an association with railway companies engaged in the transportation of similar traffic from another territory to a common market, for the purpose, among others, of a mutual adjustment of rates over their respective lines, and in pursuance of this purpose as members of such association agree to and maintain rates over their own lines higher than are reasonable, and the relation thus established between the rates from the two territories, respectively, is unjustly prejudicial to the former and unduly preferential to the latter, this is a violation of the first paragraph of section 3 of the act to regulate commerce, for which, whether or not there be a joint liability under said act of the two systems of carriers, there is at least a several liability on the part of those serving the territory injuriously affected.
761. Where the reasonableness of rates is in question, comparison thereof may be made, not only with rates on another line of the same carrier, but also with those on the lines of other and distinct carriers—the value of the comparison being dependent in all cases upon the degree of similarity of the circumstances and conditions attending the transportation for which the rates compared are charged.
762. The influence of water competition via the Atlantic on rail rates from Northeastern cities to Southern territory is not so great, as appears by the proof in these cases, as to account for or justify the difference between the mileage rates from those cities and the mileage rates from Chicago and Cincinnati to such territory under the rates complained of, and the fact of that influence on rates from the former cities can not be invoked as a justification of rates from the latter, which, after due allowance for such influence as a substantially dissimilar circumstance, still appear on comparison of the two sets of rates to be unduly preferential to the former and unjustly discriminative against the latter. In rates from different territories to a common market “relative equality is necessary in the degree of the similarity” of circumstances and conditions attending the transportation in the two cases.
763. The fact which is made to appear in these cases, that rates on traffic of the numbered classes from Chicago and Cincinnati to Southern territory are made higher than they otherwise would be for the purpose of securing to the lines from Northeastern cities the transportation of that traffic from the territory set apart to them under the Southern Railway and Steamship Association agreement, itself raises a *prima facie* presumption of the unreasonableness of those rates.
764. Each locality competing with others in a common market is entitled to reasonable and just rates at the hands of the carriers serving it and to the benefit of all its natural advantages, and no departure from the rule requiring rates in all cases to be reasonable in themselves can be justified on the ground that it is necessary in order to maintain existing trade relations, or to “protect competing markets,” or to “equalize commercial conditions,” or to secure to carriers traffic from certain territory assumed to be exclusively theirs.

765. The division of territory between the eastern and western lines, provided for in the Southern Railway and Steamship Association agreement, is without warrant in law and appears to be made for the benefit of the carriers without regard to the interest of shippers in the territory so divided, to whom it is in effect a denial of the privilege of shipping their goods or produce to market by the line or route they may prefer.
766. The "fines" or "penalties" imposed by the provisions of the agreement of the Southern Railway and Steamship Association on members for violation of association rules appear on the face of that agreement to be available as substitutes for payments which would be exacted under a regular pooling system, and the arrangement under which they are imposed is tantamount to a combination, contract, or agreement "for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads or any portion thereof," which are forbidden by the statute.
767. The requirement of the agreement of the Southern Railway and Steamship Association that its members apply "full local rates upon all traffic subject to the association agreement coming from or going to" connecting lines which do not maintain association rates, while to traffic from other connecting lines conforming to such rates full local rates are not applied, is repugnant to that clause of section 3 of the act to regulate commerce which forbids carriers to "discriminate in their rates and charges between connecting lines."
- H. W. Behlmer v. The Memphis and Charleston Railroad Company, The East Tennessee, Virginia and Georgia Railway Company, The Georgia Railroad and Banking Company, The South Carolina Railway Company; Henry Fink and Charles M. McGhee, as receivers of the East Tennessee, Virginia and Georgia Railway Company and the Memphis and Charleston Railroad Company; Daniel H. Chamberlain, as receiver of The South Carolina Railway Company; The Central Railroad and Banking Company of Georgia and The Louisville and Nashville Railroad Company, as lessees of the Georgia Railroad, and H. M. Comer, as receiver of the Central Railroad and Banking Company of Georgia. (6 I. C. C. Rep., 257.)
768. The competition of markets or the competition of carrying lines subject to regulation under the act to regulate commerce does not justify carriers in making greater short-haul or lower long-haul charges over the line in the same direction (the shorter being included within the longer distance) in the absence of an order of relief issued by the Commission upon application therefor and after investigation.
769. When a carrier on complaint under the fourth section avers substantial dissimilarity in circumstances and conditions as justifying its greater charge for a shorter haul, it is concluded by its pleading and must affirmatively show that the circumstances and conditions of which it is entitled to judge in the first instance are in fact substantially dissimilar; but upon an application for relief under the fourth section proviso the carrier is not limited by such a rule of evidence, and may present to the Commission every material reason for an order in its favor.
770. The construction of the fourth section of the act to regulate commerce as laid down in *James & M. Buggy Company v. Cincinnati, N. O. & T. P. R. Co.*, 3 Inters. Com. Rep., 682; 4 I. C. C. Rep., 744, and *Ga. R. R. Com. v. Clyde S. Co.*, 4 Inters. Com. Rep., 120; 5 I. C. C. Rep., 321, followed in *Chattanooga Board of Trade v. East Tennessee, V. & G. R. Co.*, 4 Inters. Com. Rep., 213; 5 I. C. C. Rep., 546, explained in *Gerke Brew. Co. v. Louisville & N. R. Co.*, 4 Inters. Com. Rep., 267; 5 I. C. C. Rep., 596, and sustained in *Interstate Commerce Com. v. Cincinnati, N. O. & T. P. R. Co.* (not yet reported), reaffirmed.
771. Defendants ordered to cease and desist from making higher aggregate charges on hay and other commodities carried under similar circumstances and conditions over their connected roads from Memphis, Tenn., to Summerville, S. C., than they charge for carrying said commodities for the longer distance from Memphis over said connecting line through Summerville to Charleston, S. C., without prejudice to defendants' right to apply to the Commission for relief under the proviso clause of the fourth section.
- In the matter of the Form and Contents of Rate Schedules, and the Authority for Making and Filing Joint Tariffs. (6 I. C. C. Rep., 267.)
772. The Commission having under consideration the rate sheets, schedules, and joint tariffs which, under the sixth section of the act to regulate commerce, are required to be filed in its office and to be kept open to public inspection, and having discussed the subject with a large number of traffic officials, who for that purpose met the Commission in response to its invitation; and

having, as the result of such conference, made and filed the foregoing report and opinion; and being convinced that the directions contained in the pamphlet published December 1, 1891, should be complied with, in order to bring such rate sheets, schedules, and joint tariffs into conformity with the statute, and to correct the defects and omissions which are observed in such publications; and having found and decided among other things that evidence of authority for making and filing joint tariffs should in all cases be furnished to the Commission:

It is ordered, That all common carriers subject to the act to regulate commerce shall, in all future issues of their rate sheets, schedules, and joint tariffs, including all future amendments and supplements to existing joint tariffs, comply with and conform to the general rules laid down in said pamphlet of December 1, 1891, as modified by this order.

It is further ordered, That all joint tariffs hereafter filed, and all future amendments and supplements to existing joint tariffs, be hereafter so arranged and printed as to show distinctly the names of the several parties thereto.

And it is further ordered, That all common carriers subject to the act which shall hereafter be named as parties to any joint tariff filed and published by another carrier, or as parties to any amendments or supplements to existing joint tariffs, shall forthwith upon the publication thereof file with the Commission a statement or certificate showing their acceptance of and concurrence therein and making themselves parties thereto, which said statement or certificate shall be substantially in the following form:

To the Interstate Commerce Commission, Washington, D. C.:

This is to certify that the ——— Company assents to and concurs in the publication and filing of the schedule described below, and hereby makes itself a party thereto.

Dated ———.

DESCRIPTION OF SCHEDULE.

Kind.	Number.	Date of issue.	Date effective.	Issued by (name of road).
Tariff.....				
Supplement				
Amendment				
Circular				
Classification				

(Sign) _____

In the matter of the Petition of the Cincinnati, Hamilton and Dayton Railroad Company for relief from the Operation of the Fourth Section of the Act to Regulate Commerce. (6 I. C. C. Rep., 323.)

773. Under the proviso to the fourth section of the act to regulate commerce it is left to the Commission, in the exercise of a reasonable and lawful discretion, to determine the description or exceptional character of the "special cases" in which the Commission may, after investigation, authorize common carriers to charge less for longer than for shorter distances, and the extent to which such carrier may be relieved from the operation of this section of the act.

774. The exceptional and special nature of the cases in which such discretion may be exercised renders the application of any general rule impracticable, and every special case must be determined upon its own facts and special circumstances and in view of the objects for which the law was enacted.

775. Additional transportation facilities and accommodations for passengers traveling to Chicago and return during the World's Fair are shown to be necessary to the convenience and safety of travelers. The petitioner has made provision for increased facilities by establishing a new route which can only be utilized by the acceptance of a lower rate from a longer distant point, and such acceptance without relief from the operation of the fourth section of the act will compel the reduction of rates which are reasonable from shorter distance points: *Held,* To secure additional guaranties for the safety and convenience of the public under conditions like these is believed to be in accordance with the spirit and purpose of the act to regulate commerce, and the relief from the operation of the 4th section of the act will be granted.

In the matter of the application of the Rome, Watertown and Ogdensburg Railroad Company for relief from the operation of the fourth section of the act to regulate commerce. (6 I. C. C. Rep., 328.)

776. The established rate for carrying passengers from Ogdensburg and points east of Richland on the Rome, Watertown and Ogdensburg Railroad to Chicago and return had previously been \$36.00, or \$18.00 each way. After the opening of the World's Fair the Canadian roads established an excursion rate from the points above referred to to Chicago and return of \$24.00. The Rome, Watertown and Ogdensburg Railroad Company and its connections established an excursion World's Fair rate to Chicago and return of \$25.75, which was reasonable, from shorter distance points south of Richland, including Syracuse, N. Y. The largely increased travel during the Chicago exposition required the use of all routes of transportation for the greater safety and convenience of visitors. On application of the Rome, Watertown and Ogdensburg Railroad Company to be relieved from the operation of the 4th section of the act, relief was granted, and the petitioner was authorized during the continuance of the World's Fair to accept \$24.00 to Chicago and return, the rate established by its competitors, the Canadian roads, without reducing its greater charge of \$25.75 to shorter distance points, including Syracuse.

The Southern Paint and Glass Company, The Tripod Paint Company, F. W. Hart Sash and Door Company, Lamar & Rankin Drug Company, Fulton Lumber Company, F. J. Coledge & Brother, and W. S. McNeal *v.* The Lake Erie and Western Railroad Company, The Pittsburg, Cincinnati, Chicago and St. Louis Railway Company, The Louisville and Nashville Railroad Company, and The Nashville, Chattanooga and St. Louis Railway Company, lessees of the Western and Atlantic Railroad. (6 I. C. C. Rep., 284.)

The Southern Paint and Glass Company, The Tripod Paint Company, The F. W. Hart Sash and Door Company, Lamar & Rankin Drug Company, The Fulton Lumber Company, F. J. Coledge & Brother, and W. S. McNeal *v.* The Baltimore and Ohio Railroad Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, The Alabama Great Southern Railroad Company, and the East Tennessee, Virginia and Georgia Railway Company.

777. It appearing that the discriminations and preferences complained of in these proceedings would be removed through compliance, by carriers operating in the same territory, with the decision and order of the Commission in other cases (The Chicago and Cincinnati Freight Bureaus cases, 4 Inter. Com. Rep., 592; 6 I. C. C. Rep., 195), and that suits are pending in the courts for the enforcement of such order, the proceedings herein were stayed until final determination by the courts in such other cases.

Edgar W. Emerson *v.* The Chicago, Rock Island and Pacific Railway Company.

Edgar W. Emerson *v.* The Chicago and Northwestern Railway Company. (6 I. C. C. Rep., 289.)

778. Unjust discrimination in allowance of reduced rates to ministers of religion was alleged in these cases, but the complainant failed to show that he had made proper application for the reduced rate, or that such an application would have been refused by either of the defendants, and upon these grounds the complaints were dismissed.

In the matter of the application of The Fremont, Elkhorn and Missouri Valley Railroad Company, The Sioux City and Pacific Railroad Company, and The Chicago and Northwestern Railway Company to be relieved from the operation of section four of the act to regulate commerce. (6 I. C. C. Rep., 293.)

779. Upon application by carriers to be relieved from the operation of section four of the act as to the transportation of grain and feed over their lines on the ground that through failure of crops the people of the longer distance localities were in a measure destitute and without necessary food for themselves and animals, a temporary order of relief was granted.

The Truck Farmers' Association of Charleston and Vicinity *v.* The Northeastern Railroad Company of South Carolina, The Wilmington, Columbia and Augusta Railroad Company, The Wilmington and Weldon Railroad Company, The Petersburg Railroad Company, The Richmond and Petersburg Railroad Company, The Richmond, Fredericksburg and Potomac Railroad Company, The Washington Southern Railroad Company, the Baltimore and Potomac Railroad Company, and The Pennsylvania Railroad Company, constituting the Atlantic Coast Despatch Line and the South Atlantic Coast Despatch Line, and The South Carolina Railway Com-

pany, and D. H. Chamberlain, receiver thereof, and the Richmond and Danville Railroad Company, and F. W. Huidecoper and Reuben Foster, receivers thereof. (6 I. C. C. Rep., 295.)

780. Where on shipments of strawberries and vegetables from Charleston destined for New York delivery is made by the roads at the terminus of the rail line in Jersey City, in computing the total cost of transportation to New York the expense of carriage over from Jersey City is to be added to the rate charged to that point.
781. In case of a change of delivery of such shipments from New York to Jersey City and the maintenance after the change of the same rates to the latter as had been in force to the former city for a series of years preceding the change, the carriers are charging for a less service the compensation which they had presumably deemed adequate for a greater, and the rates as applied to Jersey City are *prima facie* excessive.
782. Where a carrier pays mileage for a car which it employs in the service of shippers, it is the carrier and not the party or company from whom the car is rented who furnishes the car to the shipper, and in such case there is no privity of contract between the car owner and the shipper.
783. It is the duty of the carrier to furnish an adequate and suitable car equipment for all the business it undertakes, and also whatever is *essential* to the safety and preservation of the traffic in transit.
784. When carriers undertake the transportation of perishable traffic requiring refrigeration in transit, ice and the facilities for its transportation in connection with that traffic are incidental to the service of transportation, and the charge therefor is a charge "*in connection with*" such service within the meaning of section 1 of the act to regulate commerce, in respect to the reasonableness of which the carrier is subject to that provision of the statute.
785. *Held*, under the evidence in this case, (1) that on shipments of strawberries from Charleston to Jersey City the charge of 2 cents per quart for refrigeration en route is excessive; that the charge therefor should not exceed $1\frac{1}{2}$ cents, and that the total charge per quart for the service of transportation on such shipments and necessary services "*in connection therewith*," including refrigeration, should not be in excess of 6 cents per quart; (2) that 1.5 cents per package should be deducted from the rate on vegetables shipped in standard barrels or barrel crates from Charleston to Jersey City in cases where the delivery of such vegetables has been changed from New York to Jersey City without a change in rates, and (3) that the rate on cabbages shipped in standard barrels or barrel crates from Charleston to Jersey City or New York should not exceed $\frac{1}{2}$ of the rate on potatoes so shipped.

In the matter of the application of the Southern Railway Company for relief from the operation of the fourth section of the act to regulate commerce.

786. Upon application of the Southern Railway Company for relief from the operation of the fourth section, so that it may charge less for longer than for shorter distances for the transportation of passengers to and from various points on its lines, and upon a showing of peculiar rail and water competition making rates to competitive points on a very considerable volume of passenger traffic so low as to afford insufficient revenue to the applying all-rail carrier, having a route more direct and therefore more convenient to the public, unless permitted to charge higher reasonable rates to intermediate stations, a temporary order, specifying the extent of relief, was granted.

In the matter of the application of The Southern Pacific Company, The Atchison, Topeka and Santa Fe Railroad Company, The Union Pacific Railway Company, The Rio Grande Western Railway Company, and The Denver and Rio Grande Railroad Company for relief from the operation of the fourth section of the act to regulate commerce.

787. Upon application for relief from the operation of the fourth section, so as to permit the applying carriers and their connections to charge less for the transportation of oranges over their lines from California points to Atlantic seaboard ports than for shorter distances over the same line in the same direction, and upon a showing of market and water competition in the supply and transportation of oranges from foreign countries so severe as to preclude the California product, under rail rates ordinarily reasonable, from being marketed on the Atlantic seaboard, and of failure of the Florida orange crop, an order granting such relief for the period of sixty days was granted.

The Michigan Box Company v. The Flint and Pere Marquette Railroad Company, The Michigan Central Railroad Company, The Lake Shore and Michigan Southern

Railway Company, The Canada Southern Railway Company, and the Chicago and Grand Trunk Railway Company. (6 I. C. C. Rep., 335.)

788. The railroad companies named as defendants established and maintained a rate of 15 cents per hundred pounds on box shooks, and a lower rate of 12 cents per hundred pounds on lumber, laths, and shingles carried from Bay City, Michigan, to Buffalo, Black Rock, Tonawanda, and Suspension Bridge, New York. A carload of lumber weighs about 36,000 pounds; a carload of box shooks or shingles weighs about 30,000 pounds. Lumber carried in carloads is worth from \$350 to \$800 per car; a carload of box shooks is worth about \$220. The freight charges on both lumber and box shooks are about \$43, and on shingles about \$36 per carload. The rates on these several products are the same from Bay City to Cleveland and ports on Lake Erie other than Buffalo, and to points in Illinois, Indiana, Ohio, and other States. *Held*, That the higher rate on box shooks was not justified, and was excessive.

789. After complaint and investigation, but before decision by the Commission, the carriers complained against the reduced rate to the extent that it was alleged to be excessive. *Held*, That any order in respect of the rate of charges is unnecessary now that they are no longer excessive.

790. Where reparation is asked to the extent of alleged excessive charges, the allegation being sustained, reasonable time will be allowed for making proof of amounts paid when the evidence produced shows excessive payments without disclosing the amount of excess.

S. J. Hill & Bro. v. Nashville, Chattanooga and St. Louis Railway Company, Western and Atlantic Railroad Company, East Tennessee, Virginia and Georgia Railway Company, Georgia Southern and Florida Railroad Company, Louisville and Nashville Railroad Company, and Savannah, Americus and Montgomery Railway Company. (6 I. C. C. Rep., 343.)

791. The competitive and basing point system under which railroad companies operating in the Southern Railway and Steamship Association territory elect distributing centers and competing points reviewed, again condemned, and found to result in unreasonable and unlawful rates to points classed as local, and give favored business rivals unreasonable advantage.

792. In the absence of other influential conditions distance may be fairly considered a controlling element in fixing reasonable rates. The distance being in favor of one of two competing points, and neither the cost, the value of the service, nor other conditions of transportation in favor of the other, the shorter distance point can not justly be denied at least equal rates with the longer:

793. *Held*, on the facts in this case, That any higher rate from Nashville, Tenn., to Cordele, Ga., than to Albany and Americus, Ga., is unreasonable and unduly prejudicial to complainants.

794. Where carriers form an indirect line over which they transport freight and charge and receive greater compensation in the aggregate for a shorter than for a longer distance, the shorter being included within the longer: *Held*, To be unlawful and in conflict with section 4 of the act to regulate commerce: and, *Held further*, The fact that a more direct line, over which the mileage to a longer distance point (Macon or Americus) by the indirect line is less than the mileage to a shorter distance point (Cordele) by such indirect line, may be or is formed and used in transporting grain to or from such longer distance point (Macon or Americus) does not alter or so change the conditions of transportation over the indirect line as to take it out of the rule of the statute.

Cordele Machine Shop v. Louisville and Nashville Railroad Company and Savannah, Americus and Montgomery Railway Company. (6 I. C. C. Rep., 361.)

795. While carriers operating shorter lines have the advantage, both in making rates and in carrying under them, they can not dictate a system of charges which the operators of longer lines may not change as to their own roads, though it may be true as a rule, and as claimed by defendants, that, to get business, longer lines must take it as low as rates at the time in force over more direct routes.

796. The fourth section of the act to regulate commerce cuts off any presumption in favor of as great compensation for short as for long distances, and is based on the assumption that ordinarily a higher charge for a shorter distance is discriminating and excessive.

797. The Louisville and Nashville Railroad Company and the Savannah, Americus and Montgomery Railway Company, the defendants, unite in a joint tariff over their lines from Birmingham, Ala., to Cordele, Ga., and connecting at Cordele with the Georgia Southern and Florida Railway Company, the three

companies form a line and join in a tariff through to Macon: *Held*, That the two companies first named may lawfully accept less for their haul to Cordele as a part of the through rate to Macon than they might lawfully charge for the haul to Cordele for local delivery; but when the defendants carry a ton of pig iron to Cordele destined to Macon, and receive for their share of the through tariff \$1.45, and when they carry it to Cordele for complainant they charge \$3.69, this charge is exorbitant and unduly prejudicial to complainant.

798. The system of rate making, under which a comparatively few places arbitrarily selected are designated competitive points, or basing points, and given preferential rates, while adjacent and less distant points are classed as local and made to pay very much higher rates, is at variance with all the equality provisions of the act to regulate commerce, including that which requires all rates to be reasonable and just. In this case it results in rates to Cordele which are unreasonable and unlawful, prejudicial to complainant, and gives its more favored rivals in Macon, Albany, and Americus unreasonable advantages.

The Independent Refiners' Association of Titusville, Pennsylvania, and The Independent Refiners' Association of Oil City, Pennsylvania, *v.* The Western New York and Pennsylvania Railroad Company, The New York, Lake Erie and Western Railroad Company, The Delaware and Hudson Canal Company, The Fitchburg Railroad Company, and The Boston and Maine Railroad Company.

The Independent Refiners' Association of Titusville, Pennsylvania, and The Independent Refiners' Association of Oil City, Pennsylvania, *v.* The Western New York and Pennsylvania Railroad Company, The New York, Lake Erie and Western Railroad Company, and The Lehigh Valley Railroad Company. (6 I. C. C. Rep., 378.)

799. On failure of the defendant common carriers to cease charging for the transportation over their respective roads of barrel packages containing oil shipped from points in western Pennsylvania to New York Harbor points and Boston and Boston points, or, as an alternative, promptly furnish tank cars to shippers of oil between said points, and to file and publish tariffs accordingly, and to make reparation to injured parties legally entitled thereto by refunding all sums received for carrying barrel packages containing oil shipped between said points when the use of tank cars for such shipments had not been open to shippers impartially, and shippers had been thereby deprived of their use, all of which was required of defendants by order entered in these cases on November 14, 1892, and upon the filing of itemized claims for reparation, due hearing of the claimants and defendants, and full investigation of the matters involved: *Held*, That the claims for reparation served upon defendant initial carriers by claimants, according to a stipulation entered into by the parties, are the claims to be considered in these cases; that the parties legally entitled to reparation under said order of November 14, 1892, are oil shippers from Titusville, Oil City, and vicinity who were members of the complaining associations at the time the complaints were filed, or subsequently, up to the date of the hearing at Titusville on May 15, 1894; that the time which the claims herein may properly cover is from September 3, 1888, when the practice of charging for carrying barrels containing oil was commenced by defendants, to May 15, 1894, when hearing on the claims was had; that the shipments as to which reparation should be made are those from Titusville, Oil City, or vicinity to New York or New York Harbor points, or Boston or points taking the Boston rate, that passed over routes in which some one of the defendants was the carrier receiving the freight for transportation, initiating and controlling the method or mode of carriage and billing the freight through to destination at the aggregate rates of compensation charged; that the amount to be refunded is the charge collected by defendants for the transportation of barrels containing petroleum oil shipped and carried as aforesaid; that the defendants are severally liable for the full amount of damages proved in these cases to result from violation in which they or either of them participated.

800. The specific provision in the law for individual liability of carriers for the full amount of damages sustained through enforced payment of excessive transportation charges or other practices condemned in the statute makes it unnecessary that all the carriers over any particular route shall be before the Commission to enable it to direct reparation for wrongs which have been inflicted upon shippers under any such charge or practice.

801. Receivers of railroad companies are common carriers, subject to the prohibitions and requirements of and to regulation under the act to regulate commerce.

802. Where connecting carriers make a through route and establish through rates which apply as single charges for the whole service, they hold themselves out as carriers over such route at such rates, and must be prepared to furnish suitable "instrumentalities of shipment and carriage," so that the transportation may be conducted without wrong or injustice to those who desire to use the through line.
803. The mere circumstance that the Boston and Maine received a share of the total through charge which was equal to its individually established rate from Boston to the points of destination is altogether insufficient to make these shipments take on a purely local character over the Boston and Maine; and if the shipments were not in all essential respects local from Boston to the destination points, then they were through shipments over the through line of the connecting carriers, and must be so treated.
804. It appearing that the wrongs found to exist in these cases resulted from unequal conditions of carriage and shipment imposed by the defendants antecedent to the time of shipment, that the movement of the property depended upon the shipper's acceptance of conditions thus notified to him in advance, that he had to regulate his price for oil accordingly, and that the cost of transportation was borne by the claiming shippers: *Held*, That it is not material whether the claimants, who are all shippers, or whether the consignees paid the transportation charges. *Held, further*, That the violations of law found in these cases do not arise through any breach of contract, but from failure on the part of carriers to perform their public duties.
805. The Lehigh Valley Railroad Company, a common carrier, subject to the provisions of the act to regulate commerce, could not, by leasing its road, free itself from liabilities for practices made illegal by that statute; nor, after resuming operations of its property, pending proceedings against it to enforce statutory provisions so violated, and to recover damages for injuries sustained under such violations, can it claim exemption from liability during the time of the lease.
806. Shippers whose claims may be covered by the order entered herein on November 14, 1892, but which have not been served in these reparation proceedings, are, upon failure of defendants to make proper refund of excessive charges, entitled to proceed upon the basis of reparation prescribed in said order, to enforce their claims in the courts as provided by law.

The Independent Refiners' Association, of Titusville, Pennsylvania, and The Independent Refiners' Association of Oil City, Pennsylvania, *v.* The Pennsylvania Railroad Company and The Western New York and Pennsylvania Railroad Company. (6 I. C. C. Rep., 449.)

807. Upon supplemental hearing a finding of fact in the report filed herein on November 14, 1892, and applying to the defendant The Pennsylvania Railroad Company, is changed so as to appear as a summary of certain evidence.
808. It appearing that defendants are and have been able to furnish a large number of tank cars for the shipment of petroleum oil, and that defendants' liability to make reparation to claimants in this case under the order of the Commission of November 14, 1892, depends upon whether the use of tank cars for shipments of oil over the defendant roads, or by the "Green Line," has been open to the claimants, or, if so, whether the delivering carrier made this privilege useless to claimants through discriminating exactions imposed at the terminal point; and, it also appearing that the claims in this case require separate investigation, and that the present record does not enable the Commission to determine whether any of such claims are supported by facts as would bring them within the terms of the order of November 14, 1892: *Held*, That claimants' further remedy is by proceeding in the courts under section 16 of the act to regulate commerce.

Rice, Robinson and Witherop *v.* The Western New York and Pennsylvania Railroad Company. (6 I. C. C. Rep., 455.)

809. Complainants having filed a petition for reparation long after decision by the Commission and compliance therewith by the defendant carrier: *Held* (1), That the case will not be reopened in a supplementary proceeding, which is only brought to secure reparation, for the purpose of ruling upon questions not decided in the original case; (2) that as to the reparation demanded for injuries which resulted from practices found unlawful in said decision, it would be unwise and unjust to amend a final order entered several years ago and promptly obeyed by the defendant carrier so as to subject such carrier to further requirements in favor of complainants in respect of violations corrected under said order.

E. J. Daniels v. The Chicago, Rock Island and Pacific Railway Company, The Burlington, Cedar Rapids and Northern Railway Company, The Sioux City and Northern Railroad Company, and the Chicago, Milwaukee and St. Paul Railway Company. (6 I. C. C. Rep., 458.)

E. J. Daniels v. The Great Northern Railway Company, The Sioux City and Northern Railroad Company, and The Chicago, Milwaukee and St. Paul Railway Company.

810. The word "line" as used in the statute means a physical line, not a mere business arrangement; and carriers are prohibited from charging through rates on traffic over a line formed by connection of two or more roads which are less, as a whole, than the rates in force on like traffic carried under similar conditions in the same direction over either of the constituent roads in such line.
811. While the share which a carrier receives out of a joint or through rate over a line of which its road is a part is not necessarily the measure of reasonable rates by such carrier for a similar length of haul over its own road, it is proper in any case under the statute to use the aggregate joint or through rate in force over such line as a basis of comparison in determining the legality of rates charged by such carrier over its own road.
812. The terms "reasonable and just," "unreasonable or unjust," "undue or unreasonable preference or advantage," "undue or unreasonable prejudice or disadvantage in any respect whatsoever," as used in the statute, imply comparison of relative locations, of natural and acquired advantages, of the reasonableness of charges *per se* and in their relation to other rates on the various lines which serve competing localities, and consideration of all the facts and circumstances which affect rates to different communities.
813. As through traffic from the Atlantic Seaboard to Sioux City and Sioux Falls is subjected to the same charges for the haul from Chicago or Duluth as traffic shipped locally from those places to either destination, and as rates from Eastern points to Chicago or Duluth do not, in any controlling degree, affect the present controversy and are not assailed by the complainant, it was unnecessary to make the Eastern carriers parties to this proceeding.
814. Complaints, though brought in the name of an individual, may challenge the entire schedule of rates to competing towns, and such cases, as distinguished from those involving individual grievances only, are peculiarly public in their nature, since they embrace in one proceeding the various business and industrial interests centered in cities and towns, as those interests may be affected by the charges of public carriers whose facilities are employed in the interchange of commerce.
815. The law requires regulation of railroad charges according to the ascertained rights of persons and places; it is not an agency for the regulation of trade by enabling shippers and communities to do business, or putting them on even terms with rivals more remote from competitive territory. Therefore, the fact that one town is able, under existing rates to and from that point, to compete with another town on practically even charges for the aggregate in and out transportation, can not be regarded as an excuse for any injustice in the rates to the former town; the rates to the two competing towns should accord with their relative situation.
816. Ordinarily, the rate per ton per mile diminishes with increasing length of haul, and it does not follow that Sioux Falls rates from Chicago should be 108 per cent of Sioux City rates because the short line distance from Chicago to Sioux Falls is 108 per cent of the short line distance to Sioux City.
817. A given relation in rates between competing towns, fairly equitable at the time of its adoption, may become, through business development and other changes in conditions, severely prejudicial to the town taking the higher schedule; and this is especially liable to occur when, additional lines of communication have been opened up to the latter locality, all the roads reaching that point agree to continue the old relation of rates to such points, notwithstanding its improved situation. Agreements between carriers, though designed to secure the orderly and lawful operation of the roads, can not be permitted to fasten upon neighboring localities a relation of rates which is unnatural or unjust. The "basing point" method of rate making, to the extent it is now employed, believed to be unnecessary to an adequate scheme of tariff construction.
818. Where carriers have maintained for a considerable period a relation of rates affecting an extensive territory, though somewhat more favorable to one community therein than appears to be justified, and commercial conditions there and elsewhere have become measurably dependent upon the continuance of that relation, it would ordinarily be inexpedient to increase rates

at that point as the means of correcting relative injustice to another locality; in such case the only practicable remedy is to reduce the rates to the injured town.

819. The relative equality enjoined by the statute requires substantial modification of the present disparity in rates from Chicago to Sioux City and Sioux Falls, and under present conditions such disparity in rates from Duluth to Sioux City and Sioux Falls should be discontinued.

The Colorado Fuel and Iron Company *v.* The Southern Pacific Company; The Atchison, Topeka and Santa Fe Railroad Company; The Atlantic and Pacific Railroad Company; The Colorado Midland Railroad Company; The St. Louis and San Francisco Railway Company, and Aldace F. Walker, John J. McCook, and Joseph C. Wilson, Receivers of said The Atchison, Topeka and Santa Fe Railroad Company; The Atlantic and Pacific Railroad Company, and the St. Louis and San Francisco Railway Company; The Burlington and Missouri River Railroad in Nebraska; The Chicago, Rock Island and Pacific Railway Company; The Denver and Rio Grande Railroad Company; The Missouri Pacific Railway Company; The Oregon and California Railroad Company; The Rio Grande Western Railway Company; The Southern California Railway Company; The Texas and Pacific Railway Company; The Union Pacific Railway Company, and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R. Coudert, Receivers thereof; The Union Pacific, Denver and Gulf Railway Company, and Frank Trumbull, Receiver thereof. (6 I. C. C. Rep., 488.)

820. An offer of defendant carriers, made during the pendency of a case, to reduce the rates complained of, provided the Commission would relieve such carriers from the operation of the fourth section by granting an order permitting such reduced rates to be less than the charges of such carriers to intermediate points, is not an application for an order of relief under the fourth section. Such an order can only be granted upon the application and investigation required by law.

821. Excess of manufacturing cost to a complainant at one point over that of its competitors in other localities, by reason of inferior raw material and fuel, condition of its plant, cost of labor, or other like causes, is not to be considered in ascertaining the rightful relative adjustment of rates from such places, nor does the magnitude of a complainant's enterprise, the number of persons for whom it provides employment and support, the developing results of its business upon the natural resources of a State, the impracticability of moving its plant to other localities, or the fact that it produces material largely used on railroads for construction or repair entitle such complainant to different consideration in respect of just rates than individuals and small concerns should receive; but such facts demonstrate the far-reaching extent to which serious injury may be effected, directly and indirectly, by methods and practices which the statute was designed to prohibit.

822. Unreasonable disparity between the aggregate rates on hauls of different length to a common destination, whether by one carrier or by more than one jointly, resulting in undue advantage to one locality or business or disadvantage to another, is unlawful. It is lawful for a carrier, within reasonable limits, to accept less per ton per mile upon long hauls than upon short ones, and to widen the disparity between such rates per ton per mile as the difference in distance increases. Hence, the proportion received by some of the carriers out of a long-distance through rate is not necessarily the measure of the through rate which such carriers are entitled to make over a materially shorter distance, though such proportion is an important consideration in determining the rightful relation of the two through rates.

823. Water competition is altogether inadequate to account for the general relatively low rating of lumber, grain, and other staple or heavy goods to or between inland points, and that of a long list of commodities, including iron and steel, to San Francisco from Chicago and so-called Mississippi River and Missouri River points. Whatever may be the merits of carriers' competition as a defense of lower rates for longer than for shorter hauls, the former involving greater service and expense on the part of the carrier, better cause apparently exists for lower rates where, under higher ones, the traffic is subjected to such disadvantage or prejudice that it will not move at all.

824. It is for the interest of carriers as well as the public that their rates be low enough, if not below a remunerative point, to promote the general movement and distribution of low-class commodities, including iron and steel, which are in general demand for construction, building, manufacturing, and other purposes; and rates on steel rails and other commodities recognized as among the lowest classes of freight, which yield per ton per mile

the average received by the carriers on all freight, would be unjust. The value of the goods, the cost of the service, the degree of risk to the carrier, among other considerations, have important bearing upon the relation of rates on different kinds of traffic, as well as the reasonableness of a rate on a specified article.

825. The action of a carrier in diverting through traffic from a shorter route over which it participates in carriage, so as to secure for itself greater aggregate revenue through a long haul by a different route over which it is also engaged in transportation, sometimes results in discriminations and prejudices, both as to rates and facilities; and inequality in treatment of shippers and localities, having no other justification than this end, is indefensible.
826. The shipment of iron and steel from foreign countries to San Francisco at low rates by water affects the iron and steel industry at Pueblo as well as at Eastern points in respect to participation in supplying that market.
827. Rates in force from Pueblo to San Francisco prohibit the movement of iron and steel articles from the former place to the latter, while greatly lower rates from other and far more distant points prevail on such traffic to San Francisco, and the carriers' cost of transportation is much less from Pueblo than from such more distant points of shipment: *Held*, upon all the facts and circumstances in the case, that such rates from Pueblo are unreasonable and unjust, and subject complainant, the localities in the State of Colorado where its industry is carried on, and its traffic in iron and steel articles to San Francisco to undue and unreasonable prejudice and disadvantage, and result in giving undue preference and unreasonable advantage to other shippers in the United States of iron and steel over the defendant roads to San Francisco.
828. Carriers' methods of making and publishing rates from Eastern points to the Pacific coast criticised. Mere designation in a paper or circular of the means of arriving at rates by calculation or reference to other papers or tariffs does not constitute the rate sheet required to be published and filed by section six of the law. The reissuing by a carrier of a tariff of another line and by a supplement concurrently issued, limiting its use of the rates therein prescribed to such as are over a specified minimum, is reprehensible. The only satisfactory method of publishing rates is to definitely state the charges fixed between points clearly specified, without burdening and confusing the public with the need of making involved calculations or with scrutinizing a series of supplements to determine whether a particular rate has been changed since the original tariff was issued.

In the matter of the Safety of Employees and Travelers upon Railroads used in Interstate Commerce. (6 I. C. C. Rep., 332.)

829. Petitions of J. G. McCullough and E. B. Thomas, Receivers of the New York, Lake Erie and Western Railroad Company, and other carriers, for extension of time within which to comply with sections four and five of an act of Congress entitled "An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes," approved March 2, 1893. Time for placing grab irons and drawbars of a standard height on cars extended.

Milton Evans v. The Union Pacific Railway Company, and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R. Coudert, Receivers of said Union Pacific Railway Company; The Oregon Short Line and Utah Northern Railway Company Individually and as Operating the Railroad and Steamboat Lines of The Oregon Railway and Navigation Company, and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R. Coudert, Receivers of said Oregon Short Line and Utah Northern Railway Company; The Oregon Railway and Navigation Company, and Edwin McNeill, the Receiver of said Oregon Railway and Navigation Company. (6 I. C. C. Rep., 520.)

H. D. May v. Edwin McNeill, Receiver of The Oregon Railway and Navigation Company, and The Oregon Railway and Navigation Company.

830. Prior leave of a court which has appointed the receiver of a railroad company is not necessary to entitle a shipper to complain against such receiver in a proceeding before the Commission, nor is such leave necessary to give the Commission jurisdiction in such a proceeding.
831. A showing of substantial similarity in transportation conditions is necessary to make the rates of carriers in sections of the country other than that served by the defendant road proper standards of comparison in a case of alleged unjust and unreasonable charges.

832. Principles laid down in *Morrell v. Union Pac. R. Co.*, 4 Inters. Com. Rep., 469, 6 I. C. C. Rep., 121, and *Newland v. Northern Pac. R. Co.*, 4 Inters. Com. Rep., 474, 6 I. C. C. Rep., 131, reaffirmed and applied in these cases.
833. Upon complaints of unreasonable and unjust rates for the transportation of wheat from Walla Walla and Dayton, Wash., to Portland, Oreg., and after investigation and consideration of all the facts and circumstances in each case: *Held*, That the rates complained of were unjust and unreasonable; that reduced wheat rates put in force between said points during the pendency of these proceedings are still above reasonable and just charges for the service rendered; that the wheat rate from Walla Walla to Portland should not exceed $19\frac{1}{2}$ cents per hundred pounds, or \$3.90 per ton; and the rate for the somewhat longer distance from Dayton to Portland should not exceed 20 cents per hundred pounds, or \$4 per ton. Complainants' claim for money reparation denied.
- Alanson S. Page, Cadwell B. Benson, and Charles Tremain v. The Delaware, Lackawanna and Western Railroad Company, The New York Central and Hudson River Railroad Company, The Michigan Central Railroad Company.* (6 I. C. C. Rep., 548.)
834. Under the "Act to regulate commerce" the Commission has continuing jurisdiction over the rates and practices of carriers subject to its provisions, and is not precluded from rehearing a particular case and amending or modifying its original order therein by the refusal of a circuit court of the United States to enforce such order against the carriers affected thereby, especially when the reasons assigned for such refusal do not relate to the principal question in controversy and are consistent with an approval of the amended or modified order.
835. The Commission is authorized and required in appropriate proceedings to determine whether rates or practices of carriers complained of are unlawful, and, if so, to what extent; and to require such carriers by suitable order to cease and desist not only from doing what is ascertained to be unlawful but from omitting to do what is found to be lawful.
836. In proceedings before the Commission complaining parties are not bound to include as defendants all carriers maintaining the rates or indulging in the practices complained of, but may proceed against the particular carrier or carriers whose lines are used or required by the complainants; nor can such carriers excuse disobedience of a lawful order of the Commission because other carriers, members of an association with them, were not made parties to the proceeding and have failed or refused to take action in conformity with such order.
837. The terms "reasonable and just," "unreasonable or unjust," "undue or unreasonable preference or advantage," "undue or unreasonable prejudice or disadvantage in any respect whatsoever," and "unjust discrimination," as used in the statute, imply comparison, and rates to be lawful must bear just relation to each other as well as be reasonable *per se*.
838. The elements of bulk, weight, value, and character of commodities are main considerations in determining approximately what freight articles are so analogous as to entitle them to the same classification.
839. When carriers have uniformly placed in the same class all grades of a particular commodity—for example, window shades—regardless of the difference in value between different grades or the size of cases used for shipment, such carriers will not incur greater risks than they have thus voluntarily assumed, if the same practice is continued under a decision and order requiring a lower classification and rating for the great bulk of shipments of that commodity which are actually transported.
840. An order having been issued in this case on March 23, 1894, requiring the defendants to cease and desist from charging more than third-class rates for the transportation of window shades, and the circuit court of the United States having declined to enforce such order on the sole ground that it applied to shades having very high value as well as to the cheaper varieties: *Held*, upon rehearing before the Commission, that said order of March 23, 1894, should be vacated, and a new order entered containing the same general requirement, but with a proviso permitting the defendants to restrict their transportation of window shades at third-class rates to those limited to a specified maximum valuation at the time of shipment, and to prevent excessive undervaluation for transportation purposes of the much more expensive grades by such regulations as they may be advised are just and lawful.

In the matter of the Application of the Fitchburg Railroad Company for Relief from the Operation of the Fourth Section of the Act to Regulate Commerce.

841. Upon application for relief from the operation of the fourth section, so as to

authorize the petitioner to charge less upon east-bound shipments of bituminous coal for longer distances to Boston and points west thereof, to and including Waltham, Mass., than for shorter distances over the same line, in the same direction, to Roberts and points west thereof, to and including Shirley, Mass., and upon showing that such coal is also transported to Boston by sea, and that lower rates to the longer-distance points mentioned are necessary to enable petitioner to meet such competition, an order was granted allowing the petitioner temporarily and until further investigation to make a lower charge to the longer-distance points on such traffic to the extent of 5 cents per gross ton, subject, however, to revocation by the Commission with or without notice to petitioner at any time.

The Johnston-Larimer Dry Goods Company, complainant, *v.* The Atchison, Topeka and Santa Fé Railroad Company, and Aldace F. Walker, John J. McCook, and Joseph C. Wilson, Receivers thereof; The Gulf, Colorado and Santa Fé Railway Company; The St. Louis and San Francisco Railway Company, and Aldace F. Walker, John J. McCook, and Joseph C. Wilson, Receivers thereof; The International and Great Northern Railroad Company; The Houston and Texas Central Railroad Company; The Missouri, Kansas and Texas Railway Company; The Missouri Pacific Railway Company; The Chicago, Rock Island and Pacific Railway Company; The Chicago, Rock Island and Texas Railway Company, and The Atchison, Topeka and Santa Fé Railway Company, defendants. (6 I. C. C. Rep., 568.)

842. Rates for the transportation of cotton piece goods, molasses, sugar, rice, or coffee from Galveston, Houston, or other shipping point in Texas to Wichita, Kans., which are higher via defendant lines than rates on said commodities, respectively, from the same point of shipment to Kansas City and other "Missouri River points," *held*, to be in violation of the provisions of the act to regulate commerce requiring reasonable and just transportation charges, and forbidding undue or unreasonable prejudice or disadvantage to any person, firm, corporation, or locality, or particular description of traffic, in any respect whatsoever. *Held, further*, That such higher rates to Wichita than to Kansas City or other "Missouri River points" via the lines of the Atchison, Topeka and Santa Fé Railway Company and the Chicago, Rock Island and Pacific Railway Company are in contravention of the fourth section of the act to regulate commerce.

843. Defendants required to correct their methods of announcing rates, changes in rates, and exceptions to rate sheets by participating lines, so that their rate schedules will be readily intelligible to shippers and consignees.

Jerome Hill Cotton Company, complainant, *v.* The Missouri, Kansas and Texas Railway Company, defendant. (6 I. C. C. Rep., 601.)

844. A higher charge for a shorter than for a longer distance is sought to be justified by the existence of a compress at the longer-distance point, where cotton may be compressed and shipped thence to destination at less expense than cotton from the shorter distance can be hauled to the longer-distance point, there compressed, and hauled to destination, or, as is claimed, at less cost than it can be hauled to destination directly without compressing. The rate sheet in such case fixes a rate of charges from the shorter and longer distance points on flat or uncompressed cotton only, "with option of compression en route." In some cases the carrier avails itself of this option and has the shorter distance cotton compressed, hauling it to the longer-distance point for that purpose; at other times it is carried directly to destination without compressing, the charge to the shipper being the same in either case. *Held*, That when under this option system of rate making the carrier causes cotton to be compressed at its own cost and for its own benefit, any dissimilarity of circumstances resulting therefrom is of the carrier's own making, and does not take the traffic out of the general rule of the statute which forbids a greater charge for a shorter distance.

845. Where a carrier charges 70 and 80 cents per 100 pounds on cotton from Indian Territory points to St. Louis, and 75 cents for distances 400 to 600 miles longer, and had long had in force rates of 60 and 65 cents per 100 pounds from these Indian Territory points when it did not reach St. Louis over its own line, and at a time when the value of cotton was much higher, and its transportation more expensive than now; when it had made considerable reductions in its rates and charges generally, and upon 99 per cent or practically all its cotton rates except those in dispute; and when its rate on other freight, hauled and handled at greater expense, is much less than cotton rates; and where other roads in the same territory for like rates have much longer hauls. *Held*, That such charges of 70 and 80 cents are unreasonable, and to be reasonable should not exceed 60 and 65 cents per 100 pounds.

846. The financial necessities and conditions of the carrier should be considered and given proper weight in fixing rates, but are not controlling to the extent that, independent of other circumstances, any rates are reasonable until the earnings are sufficient to operate the road and meet all the obligations of the company. The stated obligations of the carriers between St. Louis and Texas, and St. Louis and the Indian Territory, to be met by earnings, are eight times as great on some as upon others, varying from less than \$13,000 to more than \$103,000 per mile; and to adjust reasonable rates on the basis of the bonds and stock issued is impracticable.

E. D. McClelen, W. M. Elgin, Jabe C. Faughender, Roberts & Stewart, and John C. Woolf *v.* The Southern Railway Company; The Pennsylvania Railroad Company; The Cumberland Valley Railroad Company; The Baltimore and Ohio Railroad Company; The Norfolk and Western Railroad Company and F. J. Kimball and Henry Fink, Receivers thereof; The Baltimore, Chesapeake and Richmond Steamboat Company. (6 I. C. C. Rep., 588.)

E. D. McClelen, W. M. Elgin, Jabe C. Faughender, Roberts & Stewart, and John C. Woolf *v.* The Southern Railway Company; The Chattanooga, Rome and Columbus Railroad Company and Eugene E. Jones, the Receiver thereof; The East and West Railroad Company.

847. The exaction, without lawful excuse, of a greater compensation in the aggregate for the shorter than for the longer haul over the same line in the same direction, the shorter being included in the longer, which is forbidden by section 4 of the act to regulate commerce, is only a form of unjust discrimination or undue preference, to which, it seems, Congress desired to call particular attention because of its prevalence in certain sections of the country.

848. Competition by a carrier subject to the act to regulate commerce, and all matters relative thereto, may be presented to the Commission for determination upon application of defendants for relief from the operation of the fourth section of the act, under the proviso to said act.

In the matter of Alleged Unlawful Transportation Charges by the Illinois Central Railroad Company. (6 I. C. C. Rep., 624.)

849. Application of combination rates to through and continuous shipments criticised as unjust.

850. Upon complaint forwarded by the Railroad Commission of Mississippi, and investigation thereon instituted by the Commission on its own motion, respondent materially reduced its rates of freight between Memphis Tenn., and Coldwater, Miss., and other stations on its Memphis division, such rates having been the principal subject of testimony in the proceeding, but it also appearing that such rates should be further revised as to certain points and traffic specified, *held*, upon such action of respondent, and the disposition thus manifested to remove just cause of complaint and make the further revision required, that no order be entered at this time, and that all the matters involved be held open for such further action or investigation as, upon the application or petition of any interested party, may appear necessary.

The Board of Trade of the City of Lynchburg, Va.; Witt & Watkins; Bell, Barker & Jennings; Lewis & Jennings; Robinson, Tate & Co.; Rivermont Furniture Company; Stover, Marshall & Winfree; Kinnier, Montgomery & Co.; Guggenheimer & Co.; Hughes, Effinger & Co.; Gibbs, Hancock & Trinkle; Gilliam & Co., and Christian, Beasley & Co. *v.* The Old Dominion Steamship Company; The Norfolk and Western Railroad Company and F. J. Kimball and Henry Fink, Receivers thereof; The East Tennessee, Virginia and Georgia Railway Company and Samuel Spencer, C. M. McGhee, and Henry Fink, Receivers thereof; The Southern Railway Company. (6 I. C. C. Rep., 632.)

The Board of Trade of the City of Lynchburg, Va.; Witt & Watkins; Berry, Gilliam & Co.; Craddock, Terry & Co.; Bell, Barker & Jennings; Rivermont Furniture Company; Stover, Marshall & Winfree; Hughes, Effinger & Co.; Gibbs, Hancock & Trinkle, and Gilliam & Co. *v.* The Merchants and Miners' Transportation Company; The Norfolk and Western Railroad Company and F. J. Kimball and Henry Fink, Receivers thereof; The East Tennessee, Virginia and Georgia Railway Company and Samuel Spencer, C. M. McGhee, and Henry Fink, Receivers thereof; The Southern Railway Company.

851. Under the fourth section of the act to regulate commerce a carrier is not justified in charging more for the shorter than for the longer distance by competition at the longer distance point of other carriers which are themselves subject to that act, in the absence of authority from the Commission under the proviso clause of said section. *Trammell v. Clyde S. S. Co.* (Georgia R.

Commission Cases), 5 I. C. C. Rep., 324, 4 Inters. Com. Rep., 120, cited and reaffirmed.

852. When rates are relatively unjust, so that undue preference is afforded to one locality or undue prejudice results to another, the law is violated and its penalties incurred, although the higher rate is not in itself excessive, and such rule is especially applicable where a given relation in rates, long continued and concededly equitable, is suddenly and almost completely reversed, merely because other carriers to the longer distance point have disregarded their legal duty.

853. During the period between May 29 and August 1, 1894, when greatly reduced rates were charged by defendants to Knoxville, Tenn., dealers at Lynchburg, Va., an intermediate locality, were entitled to rates over the defendant lines from New York, Providence, and Boston not greater than those accepted at the same time on like traffic over said lines to Knoxville, and the excess paid for transportation by the intervening Lynchburg dealers over contemporaneous rates to Knoxville was unlawfully collected.

The Commercial Club of Omaha *v.* The Chicago, Rock Island and Pacific Railway Company; The Chicago, Rock Island and Texas Railway Company; The Missouri Pacific Railway Company; The Burlington and Missouri River Railroad Company in Nebraska; The Kansas City, St. Joseph and Council Bluffs Railroad Company; The Missouri, Kansas and Texas Railway Company; The Atchison, Topeka and Santa Fe Railroad Company and Aldace F. Walker, John J. McCook, and J. C. Wilson, Receivers thereof; The Gulf, Colorado and Santa Fe Railway Company; The Houston and Texas Central Railroad Company; The International and Great Northern Railroad Company; The Texas and Pacific Railway Company; The Chicago, Burlington and Quincy Railroad Company, and The Wabash Railroad Company. (6 I. C. C. Rep., 647.)

854. Carriers have no right to disregard distance and natural advantages for the purpose of bringing about commercial equality.

855. The practice, if lawful, of giving to Kansas City, on shipments from the West through Pueblo, Colorado Springs, Denver, and Cheyenne, and from the Northwest through Cheyenne, rates not higher than on such shipments to Omaha, furnishes no warrant for giving Omaha rates from Texas points not higher than those to Kansas City, the circumstances and conditions in the two cases being substantially dissimilar.

856. Through rates are matters of contract between carriers composing through lines, and the Commission has no power to compel connecting carriers to contract with each other.

857. In a case before the Commission, instituted by complaint and strictly *inter partes*, matter not expressly put in issue by the pleadings or necessarily involved in issues so presented can not be authoritatively determined by the Commission.

858. If in cases of shipments under a through bill of lading and a through rate the privilege of "stoppage in transit" at an intermediate point and trying the market there, and, if it be found unsatisfactory, of reshipping on to the point of original destination at the balance of the through rate, be lawful, the granting of it to one locality and denying of it to another under substantially similar circumstances would be an unjust discrimination against the latter.

859. The maxima class rates between Omaha and Texas points should not be as high as those between Chicago and Texas points, and should not exceed those between Davenport, Rock Island and Moline and Texas points, and the rate on sirup from Omaha should not be in excess of that from Davenport.

In the matter of Alleged Unlawful Rates and Practices in the Transportation of Grain and Grain Products by the Atchison, Topeka & Santa Fé Railway Company, The Chicago Great Western Railway Company, and others. (7 I. C. C. Rep., 33.)

860. A railway company owning the entire stock of a development company, which had been organized for the purpose of holding the title to certain lands of the railway company, caused grain to be purchased in Kansas City in the name of the development company, transported over the lines of the railway company to Chicago, and there sold upon the market. The development company had no *bona fide* interest in the transaction. Neither the railway company nor the development company purchased the grain for the purposes of ownership, the whole transaction being simply a device to secure its transportation at other than the published rate; and the only rate paid was the profit upon the transaction, which varied with each shipment. *Held*, that this constituted a violation of the 2d, 3d, and 6th sections of the act to regulate commerce.

861. *Haddock v. Delaware, L. & W. R. Co.* (4 I. C. C. Rep., 296; 3 Inters. Com. Rep., 302), and *Coxe Bros. & Co. v. Lehigh Valley R. Co.* (4 I. C. C. Rep., 535; 3 Inters. Com. Rep., 460), distinguished.

Wolf Brothers v. Allegheny Valley Railway Company and others. (7 I. C. C. Rep., 40.)

862. Complainants' open-end envelopes, though made by a different and cheaper process than that employed in the manufacture of other open-end or side envelopes, and usually from an inferior grade of paper, are nevertheless made, used, and shipped like merchandise envelopes, and not like paper bags, which defendants place in a lower class; and rating complainants' envelopes in the higher class provided for merchandise envelopes is not unlawful.

W. R. Rea v. Mobile and Ohio Railroad Company. (7 I. C. C. Rep., 43.)

863. Posting notices in a railway station that all rates are on file in the office of the station agent and may be examined upon application to such agent does not constitute compliance with the requirements of the act to regulate commerce in respect to the posting by a common carrier of printed schedules showing its rates, fares, and charges.
864. Evidence presented concerning defendant's alleged unlawful practice of charging second-class rates on beans, while tomatoes are carried by it at rates provided for third-class articles—*Held* not sufficient to justify an order requiring a change in classification; *Held*, further, that the present difference of almost one-half in the rate on beans and tomatoes shipped from Verona, Miss., to East St. Louis, Ill., the actual cost of transportation being nearly the same, ought to be remedied.
865. Group rates of 70 cents on second-class articles and 44 cents on third-class applying within a distance of 271 miles from Prichard, Ala., to Verona, Miss., on shipments over an extreme distance of 640 miles to East St. Louis, and which in the next 200 miles fall to 30 cents, second class, and 22 cents, third class—*Held, prima facie* unreasonable and unjustly discriminating against points within the group which are nearer to East St. Louis and unlawful as to shipment from Verona.
866. Issuance of order in regard to defendant's group-rate practice suspended, and case held open to permit readjustment of rates by defendant, but with leave to complainant to file such application for an order in that respect as may be necessary, and with leave, also, to either party to introduce further evidence.
867. Complainant offered the defendant a carload of potatoes at Verona, Miss., and asked that the shipment be forwarded to Cleveland, Ohio, via a connecting line with which defendant had at the time through billing arrangements and through rates, but defendant's agent refused to receive and route the shipment in accordance with such direction, and complainant was thereby damaged to the extent of \$100. *Held*, that complainant was entitled to have his merchandise carried over the route which he directed, and that the failure of defendant to receive and forward the shipment accordingly was a discrimination against complainant in violation of the act to regulate commerce. Reparation ordered.

The Board of Railroad and Warehouse Commissioners of the State of Missouri v. The Eureka Springs Railway Company. (7 I. C. C. Rep., 69.)

868. The through rate over a railroad 18½ miles long (10½ miles in Arkansas and 8 in Missouri) was \$1.85, 10 cents per mile. The local charges between the stations in Arkansas were on the basis of 5 cents per mile, any higher charge being unlawful under the statute of the State. On roads of this class in Missouri the rate authorized is 4 cents to the mile. The net earnings are in excess of a moderate return on the actual investments of the railway company, but are less than in former years. *Held*, That the through rate is unreasonable and unjust, and *Held further*, That any through rate over the road in excess of \$1.20 (6½ cents per mile) is unreasonable and unlawful.

W. H. Boyer & Co. v. The Chesapeake, Ohio and Southwestern Railway Company; The Ohio and Mississippi Railway Company; The Baltimore and Ohio Railroad Company; The Illinois Central Railroad Company. (7 I. C. C. Rep., 55.)

869. The defendant carriers charged 29 cents per 100 pounds on cotton-seed meal from Memphis to Philadelphia, and 34 cents from Dyersburg, a shorter distance intermediate point on the same line. After hearing, the line or road of one of the companies complained against passed into the control of, and was being operated by, a company not a party to the proceeding. This company, on being made a party, answered that it had put in effect the same

rate, 26 cents, from both Memphis and Dyersburg, which, on further investigation, was found to be the fact. *Held*, The cause of complaint being removed, the statute substantially complied with, reparation was made. No order was necessary, and the case was dismissed.

In the matter of alleged violations of the fourth section of the act to regulate commerce by the Atchison, Topeka and Santa Fé Railway Company, and the receivers thereof, and others. (7 I. C. C. Rep., 61.)

870. No disturbance of rates, secret or open, creates such dissimilarity of circumstances and conditions under section 4 of the act to regulate commerce as will justify either of two or more competing carriers subject to that act in charging more for the short than for the long haul, without an order of the Commission.

Charles M. Willson v. Rock Creek Railway Company of the District of Columbia. (7 I. C. C. Rep., 83.)

871. The defendant, operating a line of electric railway lying partly in the District of Columbia and partly in the State of Maryland, is subject to the provisions of the act to regulate commerce, although it appears to be constructed upon or along public highways, and is essentially a street surface road for the conveyance of urban and suburban passengers. *Yeomans and Prouty*, Commissioners, dissenting.

872. All internal commerce is either State or interstate. Commerce carried on between the State of Maryland and the District of Columbia is not subject to regulation by Maryland laws, and is therefore within the jurisdiction of Congress.

873. The defendant railway company and a land company owning land and a suburban hotel along the line of railway are distinct corporations, but under substantially the same ownership and control. The land company purchased passenger tickets of the railway company at full rates of fare and sold them at half rates to guests of its hotel, to persons residing upon land which it had sold or otherwise transferred, and to others, but refused to sell such tickets at half rates to complainant, who, though living in the same locality, resided upon ground not acquired from the land company. *Held*, Upon the evidence presented, that no discrimination was practised by the railway company; that the community of interest between the two corporations resulting from common ownership was not made a device for enabling the railway company to evade its legal obligations; and that the action of the land company in discriminating between persons in the sale of tickets for the benefit of its separate business is not subject to correction by this Commission. *Morrison and Clements*, Commissioners, dissenting.

874. Defendant charged one fare of 5 cents for the ride in Maryland and another for the ride in the District of Columbia, selling, however, six tickets for 25 cents, good for passage in either the District or State, making a through fare of 10 cents, or two such tickets for a continuous ride between Maryland and the District, the total length of its road being about 7½ miles. *Held*, That unreasonableness can not be presumed from the amount of fare so charged and the other facts incidentally appearing, no direct evidence upon that question having been presented.

875. Complaint to be dismissed without prejudice, unless complainant shall file application for rehearing.

Milk Producers' Protective Association, complainant, v. The Delaware, Lackawanna and Western Railroad Company; New York, Ontario and Western Railway Company; New York, Lake Erie and Western Railroad Company, and J. G. McCullough and E. B. Thomas, the receivers thereof; New York, Susquehanna and Western Railroad Company; Pennsylvania, Poughkeepsie and Boston Railroad Company, and Henry H. Kingston, the receiver thereof; Lehigh Valley Railroad Company; New York, New Haven and Hartford Railroad Company; Lehigh and Hudson River Railway Company; the President, Managers, and Company of the Delaware and Hudson Canal Company; Albany and Susquehanna Railroad Company; Philadelphia, Reading and New England Railroad Company, and J. K. O. Sherwood, receiver thereof; New York Central and Hudson River Railroad Company; West Shore Railroad Company; Wallkill Valley Railroad Company; Ulster and Delaware Railroad Company; Elmira, Cortland and Northern Railroad Company; Lehigh and New England Railroad Company; and The Erie Railroad Company, defendants. (7 I. C. C. Rep., 92.)

876. The complaining Milk Producers' Association, whether representing its own members or specially authorized to represent other shippers, or assuming in addition to represent shippers engaged in the same industry on some of the defendant lines, was entitled to bring and maintain this proceeding,

affecting rates on milk supplied for a common market, against all the defendants engaged in carrying for that market. A defendant carrier is not entitled to have a complaint dismissed as to it "because of the absence of direct damage to the complainant," and it is the duty of the Commission, under express direction in the act, to "execute and enforce" the provisions of the statute.

877. The defendant, The New York, Susquehanna and Western Railroad Company, engaged in the transportation of milk and cream from points in the State of New York, through the State of New Jersey, to the city of New York, is subject to regulation under the act to regulate commerce in respect of such transportation.
878. Charging the same aggregate rates on like traffic for longer and shorter distances over the same line in the same direction does not contravene the provisions of section 4 of the act to regulate commerce.
879. The free transportation of shippers or dealers between State or interstate points on account of interstate freight traffic furnished to the carrier is unlawful.
880. Whether an agreement entered into by a carrier mainly for the purpose of developing its milk traffic, and under which compensation is afforded to the other contracting party equal to a considerable share of the gross receipts from such traffic, involves extravagant expenditure of revenue and is disadvantageous to the carrier is matter for it to determine; but extraordinary or unnecessary cost of operation or management cannot be permitted to excuse unreasonable or unjust rates, discriminations, preferences, or prejudices.
881. Charging the same rate per quart on milk in 40-quart cans and in bottles usually of one quart capacity and packed in cases, found to constitute discrimination in favor of the bottle method of shipment; but, for reasons stated, *Held*, That the proper relation of rates as between can and bottle milk from all points of shipment need not now be determined.
882. A uniform or blanket rate on milk, and also on cream from all stations on the defendant lines to Weehawken, Hoboken, and Jersey City, N. J., or through Jersey City to New York, N. Y., namely, 32 cents on milk and 50 cents on cream per can of 40 quarts, regardless of distance or difference in amount of service rendered, *Held*, To be unreasonable, unjust, and unduly prejudicial and disadvantageous to producers and shippers nearer the points of delivery, and in violation of sections 1 and 3 of the act to regulate commerce.
883. Upon all the facts and circumstances, including the peculiarities of defendants' milk and cream transportation service, *Held*,

That instead of the present method of charging uniform rates per 40-quart can of 32 cents on milk and 50 cents on cream from all interstate shipping stations on the defendant lines west of the Hudson River to the respective points of delivery in Weehawken, Hoboken, and Jersey City, N. J., there should be at least four divisions or groups of stations, the first group extending 40 miles from the terminal in New Jersey, the second covering a distance of 60 miles and ending about 100 miles from such terminal, the third embracing stations within the next 90 miles and extending about 190 miles from the terminal, and the fourth comprising stations beyond 190 miles from the point of delivery.

That the rates charged on milk in 40-quart cans should not exceed 23 cents from the first or 40-mile group of stations, 26 cents from the second or 60-mile group, nor 29 cents from the third or 90-mile group, and that the present rate of 32 cents from stations more distant than 190 miles is not unreasonable; that a rate on cream in cans which is 18 cents higher than the rate on milk in 40-quart cans, the present difference, is not unreasonable or unjust; that such group distances and rates should apply on the branches as well as on the main lines, and that the resulting relations of rates should be maintained; that any reductions that may be made in the present rate per quart on milk or cream in bottles should be followed by a corresponding change in the rate for each group on milk or cream in 40-quart cans.

That the distance on the Ulster and Delaware road covered by the third group should be limited to 30 miles, and stations on that road more than 130 miles from Weehawken *via* the West Shore road should constitute its fourth group; that by short-line distances all points on the Wallkill Valley and Lehigh and Hudson River roads are within the second group, and rates from such stations should not exceed those applicable for the second group; that the Erie Railroad Company should charge third-group rates from points on its Carbondale branch, which can be reached over distances less than 190 miles *via* the Scranton branch of the Ontario and Western, and such relief from the operation of the 4th section is granted to the Erie Company as may be necessary to enable it to lawfully make such charges effective; that

the defendant, the New York, Susquehanna and Western Railroad Company, is entitled on shipments of milk and cream from New York points which it carries through New Jersey and delivers in New York City to charge such an addition to its rate to Jersey City, N. J., as is reasonably warranted by the greater cost of delivery in New York City.

In the matter of the application of the Great Northern Railway Company, The Northern Pacific Railway Company, The Union Pacific Railway Company, The Atchison, Topeka and Santa Fe Railway Company, The Chicago and Alton Railroad Company, The Wabash Railroad Company, The Burlington, Cedar Rapids and Northern Railway Company, The Chicago and Northwestern Railway Company, The Chicago and Grand Trunk Railway Company, The Chicago, Burlington and Northern Railroad Company, The Chicago, Burlington and Quincy Railroad Company, The Chicago Great Western Railway Company, The Chicago, Milwaukee and St. Paul Railway Company, The Chicago, Rock Island and Pacific Railway Company, The Chicago, St. Paul, Minneapolis and Omaha Railway Company, The Minneapolis and St. Louis Railroad Company, The Wisconsin Central Railroad Company, The Grand Trunk Railway Company of Canada, and the Spokane Falls and Northern Railway Company for relief from the operation of the fourth section of the act to regulate commerce.

884. Upon application for relief from the operation of the fourth section and showing of competition by the Canadian Pacific Railway, a line wholly in Canada, a temporary order was granted authorizing the petitioners to charge less for the transportation of passengers both east bound and west bound for the longer distances between points in the "Kootenai district," in British Columbia, Dominion of Canada, and points upon the Detroit and St. Clair rivers and easterly thereof in said Dominion, and in that portion of the New England States reached directly by the rails of the Grand Trunk Railway, than for the shorter distances to intermediate points, but not less than those charged by the Canadian Pacific Railway for transportation of passengers between the same points.

In the matter of the Tariffs and Classification of the Pennsylvania Railroad Company and Other Companies. (7 I. C. C. Rep., 177.)

885. Investigation of freight rates charged by carriers to southern points during a rate war in June and July, 1894 (report of which was duly made and published—Eighth Ann. Rep. Int. Com. Com., 20-24), discontinued on supplemental report and opinion stating the restoration on August 1, 1894, of rates in force prior to June of that year, and citing decision of Commission awarding reparation to injured merchants and dealers at Lynchburg, Va. (6 I. C. C. Rep. 632.)

Freight Bureau of the Cincinnati Chamber of Commerce *v.* Cincinnati, New Orleans and Texas Pacific Railway Company, Louisville and Nashville Railroad Company, *et al.* (7 I. C. C. Rep., 180.)

886. A city is entitled to benefits arising from its location, and the fact that it enjoys exceptional advantages in one respect is no reason why it should be subjected to discrimination in other respects.

887. The location of Cincinnati upon the north bank of the Ohio River, and the fact that railroads leading south must cross that river by expensive bridges for which an arbitrary or toll is charged, or allowed in the division of rates, justify some higher differential from Cincinnati over rates from Louisville, on the south bank of the river, to destination points in so-called "Montgomery and Southwestern territory."

888. Distance is an important element in the determination of rates, and in the absence of other influences it is a controlling factor. When carriers claim justification for higher rates from a competing locality on the ground of greater distance, and the complainant, representing such locality, fails to show circumstances which operate to eliminate distance from consideration or to counteract its influence, such higher rates, if made in accordance with the principle of distance, will not be held unreasonable.

889. While existing differentials which result in higher freight rates from Cincinnati than from Louisville to "Montgomery territory" and "Southwestern territory" may, as a whole, discriminate against Cincinnati, the inequality arises, if it exists, through combinations of rates to Cincinnati and Louisville from territory north of the Ohio River with rates from these points south; there is no showing whether the fault lies with rates north or south of the river, and neither of the carriers operating north of the river is a party to this proceeding. It fairly appears, on the other hand, that if such differentials were entirely abolished, the rates from a large section north of the Ohio would be against Louisville. The complainant asks in its petition

that the higher rates from Cincinnati than from Louisville be prohibited; readjustment of present rates is not prayed for, and only the fact of distance is presented as a basis for determining whether the higher rates from Cincinnati are unjust, or what rates would be just: *Held*, That the complaint should be dismissed without prejudice.

Mount Vernon Milling Company v. Chicago, Milwaukee and St. Paul Railway Company. (7 I. C. C. Rep., 194.)

890. Defendant's failure or refusal to provide at its own cost and thereafter maintain a spur or side track from its main line to complainant's mill and elevator at Mount Vernon, S. D., was not, by the evidence adduced as to the provision and maintenance of side tracks from defendant's line to mills or elevators at other points in South Dakota, shown to be in violation of section 3 of the act to regulate commerce.

Charles G. Freeman v. Atchison, Topeka and Santa Fe Railroad Company, and Aldace F. Walker and John J. McCook, Receivers thereof; Chicago, Rock Island and Pacific Railway Company; Kansas City, Fort Scott and Memphis Railroad Company; Missouri, Kansas and Texas Railway Company; St. Louis and San Francisco Railway Company, and Aldace F. Walker and John J. McCook, Receivers thereof; St. Louis, Iron Mountain and Southern Railway Company; St. Louis Southwestern Railway Company; Southern Pacific Company, and Texas and Pacific Railway Company. (7 I. C. C. Rep., 202.)

891. A combination rate of 72 cents on potatoes in carloads from Cadillac, Mich., via Grand Rapids, Mich., to Texas common points, made effective since this proceeding was instituted, was a reduction of 5 cents in the rate complained of, and was a substantial satisfaction of the complaint; but it appeared that local rates in force to and from the Mississippi River were charged on said shipments from Cadillac, while defendants, operating west of that river, accepted less than their said charges west of the river on like shipments which originated at Grand Rapids, Mich., and other points in so-called Detroit-Cleveland territory: *Held*, That without approving defendants' system of shrinking rates, the complaint should be dismissed without prejudice.

Paine Brothers & Co. v. Lehigh Valley Railroad Company; Philadelphia and Reading Railroad Company, and Joseph S. Harris, Edward M. Paxson, and John Lowber Welsh, receivers thereof; Central Railroad Company of New Jersey; Wilmington and Northern Railroad Company; New York, Susquehanna and Western Railroad Company; Erie Railroad Company; Delaware and Hudson Canal Company; New England Railroad Company; Fitchburg Railroad Company; Fall Brook Railway Company; Delaware, Lackawanna and Western Railroad Company; Central Vermont Railroad Company, and E. C. Smith and Charles M. Hays, receivers thereof; New York Central and Hudson River Railroad Company. (7 I. C. C. Rep., 218.)

892. Defendants established rates on "ex-lake" grain from Buffalo, N. Y., to New York and Philadelphia, and points taking New York and Philadelphia rates, which were lower on so-called cargo lots of 10,000 bushels of oats and 8,000 bushels of other grain than on shipments of oats and such other grain in carload lots, but afterwards modified their tariffs so that, with few exceptions, the lower rates for cargo lots were restricted to export shipments. Such modification of tariffs removed the principal grievance complained of, and no evidence was offered concerning rates on shipments of grain for export: *Held*, That the principle involved under lower rates for cargo or train-load quantities than for carload shipments, whether for export or domestic use, violates the rule of equality and tends to defeat its just and wholesome purpose, and such purpose is not fully accomplished by making all cargo shippers pay the same rate and charging all carload shippers alike; that defendants should reconsider their grain tariffs with a view to amendment thereof in accordance with the opinion herein expressed, and that the case be held open for such further action as may be deemed appropriate.

The New York, New Haven and Hartford Railroad Company v. Thomas C. Platt and Marsden J. Perry, Receivers of the New York and New England Railroad Company. (7 I. C. C. Rep., 323.)

893. Rates established by a single carrier "upon its route" and shown on individual tariffs, and joint rates "over continuous lines or routes operated by more than one carrier" shown on joint tariffs, are the rates authorized by section 6 of the act to regulate commerce, and required to be posted at stations and filed with the Commission. The word "joint," and the express reference in the statute to the several carriers over a continuous line and the joint tariffs which they establish, import concurrence and assent in fixing

aggregate rates for a combined service, as distinguished from the separate rates of a single carrier for transportation "upon its route."

894. Joint rates may be so divided between the carriers that each receives less than its established local rate, or so that the full local charge is secured by one or more of the carriers, the other party or parties accepting less than local rates, but whatever the basis of division, the essential feature of such rates is that the connecting carriers have agreed or mutually consented to carry traffic over the connecting line for a less aggregate charge than the sum of their established local rates.

895. In the absence of some agreement or understanding with a connecting line by which a joint tariff of rates is authorized, a given carrier can not lawfully publish or apply any other rates than those which it fixes for transportation between points reached by its railroad; and the rates so fixed are the only lawful rates which such carrier can charge for any transportation service which it may perform, whether the traffic carried is destined to points on its own road or to points on the line of some other carrier.

896. A carrier which has published and filed its rates as the law requires may combine such rates with the lawfully established rates of a connecting carrier or carriers, and thus announce the aggregate amount for which traffic will be transported from points on its railroad to points on the line of such connecting carrier or carriers; but one carrier can not lawfully add to the duly established rates of another carrier any amount it pleases less than its own local rates, and publish and use that sum as a through rate to points on the line of such other carrier without its consent. Such a through rate is not a "joint rate," for joint rates can be made only by concurrence or assent; nor is it a combination rate, for one of its component parts has no legal existence or sanction as a separate or local charge; there must be lawful rates upon each of the roads before there can be a lawful combination of rates.

897. While through routes and reduced through rates, which would facilitate the movement of traffic and thereby benefit the public, are in some cases prevented by the unreasonable refusal of carriers to unite in granting such facilities, and the statute was apparently designed to require connecting carriers to join in the formation of through routes at lower aggregate rates than a combination of locals, the machinery necessary to accomplish that purpose is not provided, and the Commission has repeatedly called attention to this defect in the law.

898. Defendant published a schedule purporting to be a joint tariff of rates on coal from a point on its road to a number of destinations reached by the complainant railroad company, whereby the complainant company received its full local charges to said destinations from junction points with defendant's road, and the defendant accepted the remainder, which was in each instance less than its established local rate from the place of shipment to the point of connection. Complainant, which also carried coal to the same destinations by a longer route over its own rails, thereby securing greater compensation than was afforded from coal coming to it by defendant's road, refused to unite in the rates named by defendant in said so-called joint tariff and protested against the use of such rates by a connecting carrier as unauthorized and unlawful for want of mutual consent. *Held*, That the complaint should be sustained and the defendant company be required to cease and desist from publishing or applying through rates to points on complainant's lines which are less than the sums of their respective local charges.

In the matter of alleged unlawful rates and practices in the transportation of grain and grain products by Atchison, Topeka and Santa Fé Railway Company and others. (7 I. C. C. Rep., 240.)

899. Shipments of grain were carried to Kansas City, Mo., from points west thereof at local rates, and quantities of grain were afterwards reshipped and rebilled from Kansas City to Chicago or other destinations at the balance of the established through rate from the original point of shipment to Chicago or other ultimate destination, instead of the higher local rate in force from Kansas City to such destination. There was no agreement for through carriage between shipper and carrier at the original point of shipment, no other destination than Kansas City was named, and upon carriage of the grain to that point and delivery to consignee the transportation was completed and the local rate in effect to Kansas City was paid; but the practice was to allow the consignee or other owner of grain at Kansas City to ship from Kansas City to Chicago and other points at the "balance of the through rate," upon presentation of the paid expense bill to Kansas City and certification by a joint agent of carriers at Kansas City. Under this "expense bill" practice it was practicable, through transfer of expense bills, to secure

a lower "balance of through rate" than would result from deducting the local rate between the actual point of origin and Kansas City from the through rate between said point of origin and the final destination, and other rate manipulations were possible. *Held*, That such shipment and reshipment did not constitute a through shipment from the point of origin to the point of final destination, and grain so shipped and reshipped was not entitled to the benefit of the through rate in force. *Held further*, That the shipment from the point of origin to Kansas City was local, resulting in the grain becoming Kansas City grain, and the fact that it had come from a point farther west was no reason for applying on shipments of such grain from Kansas City any less or different rate than was in force from Kansas City.

900. No opinion upon the practices of milling or reconsigning or holding in transit, if the shipment is a through shipment upon a through rate, is expressed.
- Brewer & Hanleiter v. Louisville and Nashville Railroad Company; Nashville, Chattanooga and St. Louis Railway Company; Western and Atlantic Railroad Company; Central of Georgia Railway Company. (7 I. C. C. Rep., 224.)
901. Rates charged by defendants for the transportation of freight articles from Cincinnati, Ohio, and Louisville, Ky., to Griffin, Ga., are materially higher than their rates on like traffic carried from Cincinnati and Louisville through Griffin to Macon, Ga., and Griffin and Macon are competing localities. *Held*, Upon the facts, that Griffin is entitled to Macon rates from Louisville and Cincinnati, and that charging any higher rate to Griffin is an unjust discrimination under section 3 of the act to regulate commerce.
902. Water competition, to justify higher shorter distance charges under the fourth section must be actual competition for transportation involved, and such as to dictate the rate by rail. A railroad rate so low as to drive water transportation out of existence can not be justified by showing the possibility of water competition; the law permits railroads to *meet*, not to *extinguish*, such competition.
903. Competition between markets, or between carriers subject to the regulating statute, does not create such dissimilarity of circumstances and conditions as will justify carriers in charging more for the short than for the long haul, under the fourth section, without an order of the Commission.
904. Defendants are engaged in competition with other carriers by railroad in the transportation of freight to both Griffin and Macon, Ga., but the defendants and their competitors make greatly lower rates from Louisville and Cincinnati for the longer distance to Macon than for the shorter distance to Griffin, which is an intermediate point between Atlanta and Macon. While the rates to Atlanta and Macon are substantially the same, such rates to Griffin are the rates to Atlanta added to local rates from Atlanta to Griffin. Rates for the transportation of freight from New York and other eastern points to Griffin and Macon are practically the same. Although there is railroad competition for traffic to Griffin as well as to Macon, the carriers from Louisville and Cincinnati, while making low rates on account of such competition to Macon, refuse to establish like rates for Griffin. *Held*, That if there can be exceptional instances in which competition between carriers subject to the act may create the dissimilarity of circumstances and conditions under the fourth section, this case, where such competition is shown at both the shorter and longer distance points, is not one of them.
905. Railroad companies have the right to earn a proper return upon some investment; just what has not been very definitely determined; but in earning such returns they must operate their properties in accordance with the provisions of the statute forbidding discrimination between localities and charging more for the short than for the long haul.
- Suffern, Hunt & Co. v. Indiana, Decatur and Western Railway Company. (7 I. C. C. Rep., 255.)
- Suffern, Hunt & Co. v. Indiana, Decatur and Western Railway Company and Cincinnati, Hamilton and Dayton Railway Company.
906. Rules or regulations which in any wise change, affect, or determine any part or the aggregate of a carrier's rates, fares, or charges must be shown separately upon the carrier's posted schedules of rates, fares, and charges; and any such rules or regulations promulgated by the carrier in circulars issued independently of its rate schedules are not lawfully in force.
907. Rules or regulations which, if enforced, would result in changing or affecting rates or charges shown on published schedules, must be notified to the public for the time required by law for other rate changes. The notice should set forth the changes proposed to be made in the schedules then in

effect, and such changes must be shown by printing new schedules or be plainly indicated upon the schedules in force at the time.

908. Circulars issued by a railway company prescribed maximum and minimum carload weights for grain depending upon the capacity of the car furnished by the railway company to the shipper; the rules so prescribed were not shown upon the carrier's posted schedules of rates and charges; and application of the rules to three carload shipments of corn carried for complainant resulted in materially increasing the charges above those in force under the carrier's published rate schedules. *Held*, That complainant only had to consult the schedule showing defendant's rates and charges, and that complainant is entitled to recover charges collected on its shipments in excess of those set forth in such schedule.
909. Under judicial interpretation of the statute, shippers and consignees can not depend for the lawful rate or charge upon what may be quoted by the carrier's agent, but they must be guided by the published rate sheets themselves; and this emphasizes the duty of carriers to make their schedules of rates comply precisely with the mandatory provisions in the statute concerning the contents and publication of such schedules, so that shippers may readily and accurately determine therefrom what rates, and what transportation rules affecting rates, are actually in force for a particular service.
910. The fact that circulars containing rules concerning carload weights had been filed with the Commission, and no opinion had been thereupon expressed by the Commission as to the legality thereof, raises no presumption of approval by the Commission of the rules or regulations therein set forth, or of the manner in which they were established.
911. A carrier which had not provided track scales at stations prescribed a rule or regulation forbidding shippers to load grain in cars beyond a specified weight above the marked capacity under a so-called "penalty" of increased rates on the excess weight. *Held*, That such rule or regulation, if properly established, is not unlawful, provided the increase in charges for excessive weight is not unreasonable, and the margin between such maximum and the carrier's minimum carload weight for grain is so wide that shippers may, without scales, readily comply with both rules.
912. A carrier enforced minimum carload weights for corn and other grain (except oats) which were 4,000 pounds less than the capacity of the car furnished by the carrier; the capacity of the car ordered by the shipper when such order could not be complied with, but this only on application to the superintendent, thus entailing more or less delay and sometimes loss to shippers; the capacity of the car furnished by the carrier on shipments destined to Indianapolis; and a general minimum weight of 28,000 pounds. *Held*, upon all the facts, That minimum carload weights for corn or other grain which vary with the size of cars furnished by the carrier are unreasonable and unjust and operate to subject complainant and other shippers to unjust discrimination and undue prejudice and disadvantage; and that the carrier should establish a fixed, reasonable, and just minimum carload weight for corn and for each other kind of grain.

In the matter of the application of the Chicago and Eastern Illinois Railroad Company for relief from the operation of the fourth section of the act to regulate commerce.

913. Upon application for relief from the operation of the fourth section, and upon showing of competition by shorter lines and that petitioner is able to utilize returning trains of coal cars in traffic to the longer distance points, a temporary order was granted authorizing the petitioner to charge less for the longer distance between Chicago, Ill., and La Crosse, Wilders, Wheatfield, or Fair Oaks, Ind., than for shorter distances over the same line in the same direction to intermediate points in Indiana, but not less for such longer distances than the rates which are charged by such shorter lines between the same points.

In the matter of the application of the Delaware, Lackawanna and Western Railway Company for relief from the operation of the fourth section of the act to regulate commerce.

914. Upon application for relief from the operation of the fourth section, and showing of competition by short lines, a temporary order was granted authorizing the petitioner to charge less for freight for Chicago and other points west of Buffalo, for the longer distances from Syracuse and other points on its line, Oswego to Little York inclusive, than for the shorter distances over the same line, in the same direction, from stations on its lines in New York south of Little York and west of Binghamton to and including Atlanta,

N. Y., but not less for such longer distances than the rates charged by such short-line carriers to the same points from Syracuse and points taking Syracuse rates.

J. W. Cary, R. M. Thornton, S. A. Brown & Co., R. L. Smith, A. N. Matthews, W. J. Lloyd, J. H. Gadd, W. H. Linzy, T. E. Clark, F. A. Pickard, and W. S. Wadsworth, Merchants and Dealers at Eureka Springs, Arkansas, Complainants, *v.* The Eureka Springs Railway Company, The St. Louis and San Francisco Railway Company, and Aldace F. Walker and John J. McCook, Receivers thereof, The Atchison, Topeka and Santa Fe Railroad Company, and Aldace F. Walker and John J. McCook, Receivers thereof, Defendants. (7 I. C. C. Rep., 286.)

915. The defendant companies, by joint tariffs, established through lines from St. Louis and Springfield to Eureka Springs, and by an arrangement with the Harrison Transportation Company, attempted to extend by wagon carriage such through lines to Harrison, Berryville, and many other points in Arkansas not reached by either or any line of railroad, charging much less to Eureka Springs on goods to be so forwarded than on the same goods from same points of origin for Eureka Springs proper. *Held*, The provisions of the act to regulate commerce do not apply to transportation by team or wagon, and neither the joint tariffs nor the arrangement of defendants with the Harrison Transportation Company constitute substantially dissimilar circumstances and conditions nor make them joint carriers with said transportation company, nor carriers at all beyond Eureka Springs, and such unequal charges to Eureka Springs constitute unjust discrimination, and subject complainants, their business, and Eureka Springs, to unreasonable disadvantage and give undue preference to Harrison and such other localities and shippers.

916. The rate on goods of the first class between St. Louis and Eureka Springs proper being \$1.25 per 100 pounds and on the same goods from or to the Harrison district the charge for the same services being \$1 and on other classes in proportion; between Springfield and Eureka Springs the first-class rate being 72 cents, and for or from the Harrison district 45 cents. *Held*, Such rates to and from Eureka Springs proper are unreasonable and unlawful.

917. The average annual earnings for a term of years would warrant a reduction of the Eureka Springs rates to the basis of rates conceded to the Harrison district, but the current annual earnings do not justify a reduction to the full extent of such discriminations, and a moderate present reduction is recommended.

918. The charges of the Eureka Springs Railway Company between Seligman and Eureka Springs on first-class goods to or from the Harrison district are 19 cents per 100 pounds, and on the business of Eureka Springs proper are 35 cents, with proportionate rates on all classes, which Eureka Springs rates are found to be unreasonable and unlawful.

919. Transportation charges should be liberal until the earnings are fully sufficient for a fair return on actual investment, but it does not follow that rates long maintained and grossly discriminative must be continuous or may be lawfully exacted year by year.

920. "Under the interstate commerce act the Commission has no power to prescribe the tariff of rates which shall control in the future." (167 U. S., 479.)

"The reasonableness of the rate in a given case depends on the facts, and the function of the Commission is to consider the facts and give them their proper weight." (162 U. S., 184.)

Under the law as construed by the court the Commission has power to say what in respect to the past was reasonable and just, but as to rates complained of as unreasonable, unjust, and unlawful, and so found to be by the Commission, it can make no provision or order for their reduction which the courts are required to enforce or the carriers obliged to obey.

When rates are found to be unreasonable, the Commission can declare them unlawful and recommend their reduction, and where, after investigation, rates of carriers complained of are found to have been in the past, and still to be, unjust, unreasonable, and in violation of the statute, it is made the duty of the Commission, by section 15 of the act to regulate commerce, to notify and require such carriers to cease and desist from such violations.

W. L. Fewell *v.* Richmond and Danville Railroad Company (operating the Georgia Pacific Railway) and Samuel Spencer, F. W. Huidekoper, and Reuben Foster, Receivers thereof; Alabama Great Southern Railroad Company; Alabama and Vicksburg Railway Company; Mobile and Ohio Railroad Company; Georgia Pacific Railway Company and Samuel Spencer, F. W. Huidekoper, and Reuben Foster, Receivers thereof; The Southern Railway Company. (7 I. C. C. Rep., 354.)

In the matter of rates charged by The Alabama Great Southern Railroad Company and The Alabama and Vicksburg Railway Company for the transportation of coal from points in the State of Alabama to points in the State of Mississippi.

921. Defendants and other carriers, all subject to the act to regulate commerce, are engaged in the interstate transportation of coal, wholly by railroad, from various mines in Alabama and other States to Jackson, Miss., under agreed rates, which are less for each line than is charged on coal for shorter distances over the same line in the same direction, the shorter being included within the longer distance. *Held*, That the transportation by defendants of coal in carloads from such mines to Jackson and shorter-distance localities is performed "under substantially similar circumstances and conditions," within the meaning of the fourth section of the statute.

922. Coal transported from Corona, Birmingham, or Blocton, Ala., to Vicksburg, Miss., must go by railroad, and the competition of such coal, and coal from other Alabama mines in the Vicksburg market, is with coal brought over long distances down the Ohio and Mississippi rivers from Pittsburg, Pa., and other points in that mining district. *Held*, That this is not competition between rail and water lines for transportation from a particular locality, but the competition of markets or mines for the supply of coal at Vicksburg, the force and effect of which is determined by commercial considerations peculiar to the business of shippers and wholly disconnected from the circumstances and conditions under which transportation is conducted.

923. Section 4 of the act applies when the traffic is "over the same line" and "in the same direction," and to "transportation under substantially similar circumstances and conditions," and "the shorter" must be included within "the longer" distance; and any injustice or undue hardship which may result to carriers from compliance with the statute is removable by the Commission upon application by such carriers under the procedure authorized by the proviso clause of that section.

A. J. Gustin v. The Illinois Central Railroad Company *et al.* (7 I. C. C. Rep., 376.)

924. Freight rates from Memphis, New Orleans, Dallas, and other Southern and Southwestern points to Kearney, Nebr., made up of rates to and from Omaha, were alleged to be unreasonable, unjust, and unlawful, but no joint through rates were published or filed, the defendants either denied or did not admit that the shipment and carriage was continuous, and no proof was submitted by complainant showing that defendants make a through route in fact by their course of business. *Held*, That the Commission has no power to compel a through route, and, no issue of law or fact having been presented over which the Commission has jurisdiction, the complaint should be dismissed.

The Board of Railroad Commissioners of the State of Kentucky v. The Cincinnati, New Orleans and Texas Pacific Railway Company; The Southern Railway Company *et al.* (7 I. C. C. Rep., 380.)

925. Comparison of wheat rates charged by defendants from Nicholasville, Ky., with higher rates to the same points from St. Louis, Chicago, or Milwaukee, much more distant points of shipment, or with a lower wheat rate in force from Louisville, Ky., to Newport News, Va., while tending to support complainant's case, not found to fairly establish the fact that the rates complained of were unreasonable, or that they discriminated against Nicholasville.

926. Rates charged over the Cincinnati, New Orleans and Texas Pacific and Southern Railways for the transportation of wheat in carloads to Morristown and other points in Tennessee, found to have been higher for the shorter distance from Nicholasville, Ky., than for the longer distance over the same line, in the same direction, from Cincinnati, Ohio; but by a joint tariff recently filed the rates from Nicholasville were made not higher than those from Cincinnati. *Held*, That the former rates were in violation of the fourth section of the act, but that the present charges are not, and that formal order in that respect should not now be issued.

Commercial Club of Omaha, complainant, v. Chicago and Northwestern Railway Company; Fremont, Elkhorn and Missouri Valley Railroad Company; Chicago, Milwaukee and St. Paul Railway Company; Chicago, Rock Island and Pacific Railway Company; Chicago, Burlington and Quincy Railroad Company; Burlington and Missouri River Railroad Company in Nebraska; Union Pacific Railway Company and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederick R. Coudert, Receivers of Union Pacific Railway Company; defendants. (7 I. C. C. Rep., 386.)

927. While like or "group" rates are frequently applied to cities considerably

farther apart than are Omaha and Council Bluffs, the usage in this regard is not so uniform and well established as to make an exception at those cities even *prima facie* unlawful.

928. The public right to a just relation of rates between rival communities arises from the statute which forbids discriminating charges, and that right can not be abridged or enlarged by agreements of carriers with each other, nor by promises made to shippers.
929. Council Bluffs, on the east bank of the Missouri River, is more favorably situated than Omaha, on the west side of that river, in regard to traffic with points in Iowa, and the defendant carriers are not to be condemned for recognizing such natural advantage of location in adjusting their charges; nor does it follow that rates should be the same from Omaha and Council Bluffs into Iowa because they are the same from those cities into Nebraska.
930. Omaha and Council Bluffs, on opposite sides of the Missouri River, are connected by an expensive bridge owned and operated by the Union Pacific Railway, and also used under lease by other carriers. Rates at Omaha and Council Bluffs are substantially the same to and from all points, except points in Iowa west of the west bank of the Mississippi River, and rates to and from those points are usually the bridge toll higher for Omaha than for Council Bluffs. Rates from the South are made the same to both cities by the competition of railways operated on both sides of the Missouri River. Rates from the West are the same to these cities and other common points as far east as Chicago, and are part of an extensive system of charges applied by the transcontinental lines. Rates from the East are as low to Omaha as to Council Bluffs; and this equality was brought about some fifteen years since by increasing rates to Council Bluffs to the amount of the bridge toll as then fixed. For reasons stated in the report this parity of rates from eastern points is a considerable advantage to Omaha. In view of the conditions affecting transportation to and from points in Iowa, and of the whole rate situation of the two places: *Held*, That the charge of unjust discrimination against Omaha is not sustained, and that the complaint should be dismissed without prejudice.
931. To justify interference by the Commission with the adjustment of rates as between rival localities it must appear that the preference and advantage to the one and the corresponding prejudice and disadvantage to the other are so appreciable and established with such a degree of certainty as to be justly declared unreasonable.

In the matter of the application of the Chicago and Alton Railroad Company and many other carriers for extension of the period within which they shall comply with the provisions of the first and second sections of the act of March 2, 1893. (8 I. C. C. Rep., —.)

932. Petitioning carriers granted an extension of two years from January 1, 1898, within which to comply with sections one and two of the railway safety-appliance act of March 2, 1893; and those owning cars and locomotives not equipped with couplers and train brakes as provided in sections one and two of said act required to make semiannual report of cars and locomotives so equipped during the six months then preceding.

Edwin E. Montell *v.* Baltimore and Ohio Railroad Company and John K. Cowen and Oscar G. Murray, Receivers thereof; Southern Railway Company. (7 I. C. C. Rep., 412.)

933. On complaint of violation by defendants of sections 3 and 4 of the act to regulate commerce, through charges on coal in carloads from Cumberland, Md., which were greater for the shorter distance to North Garden, Va., than for the longer distance over the same line to Lynchburg, Va., it appeared at the hearing that defendants had withdrawn and discontinued the lower rate to the longer distance point. *Held*, That such action by defendants obviated the infractions of the law so complained of.
934. Defendants' aggregate charge for the transportation of coal in carloads from Cumberland, Md., to North Garden, Va., and their respective divisions thereof, found excessive in comparison with rates charged by defendants and other carriers to various points; but the Commission is not authorized to fix a reduced or lower rate of charges which carriers can be required to respect in the future, even if the ascertained facts warranted a finding as to the extent of the reduction which should be made.
935. Although the act to regulate commerce requires that transportation charges shall be reasonable and just, and complainant prayed in his petition that defendants be ordered to establish and maintain such rate on coal in carloads from Cumberland, Md., to North Garden, Va., as should be deemed just, reasonable, and lawful, the act as recently interpreted by the courts makes

no provision under which carriers can be ordered or required to establish or maintain any rate other than such rate of charges as any such carrier may fix and establish for itself.

Fuller E. Calloway v. Louisville and Nashville Railroad Company; Western Railway of Alabama; Atlanta and West Point Railroad Company. (7 I. C. C. Rep., 431.)

936. It being settled that competition must be considered and may justify deviation from the rule of the fourth section, it follows that wherever competition of controlling force by existing lines is practicable it must be given effect, and that freely engaging in competition at one point, while wholly or largely suppressing it at a shorter distance locality, can not entitle carriers to make higher charges for shorter than for longer hauls over the same line in the same direction.

937. The transportation of freights by defendants from New Orleans to Lagrange and Fairburn, Ga., is "under substantially similar circumstances and conditions," the conditions and circumstances affecting transportation by them from New Orleans to Lagrange and Hogansville, Lagrange and Newnan, and Lagrange and Palmetto, all in Georgia, are also substantially similar; and freight rates over defendants' line which are higher from New Orleans for the shorter distance to Lagrange than for the longer distance to either Hogansville, Newnan, Palmetto, or Fairburn, violate section 4 of the statute.

938. Higher rates charged by defendants from New Orleans to Lagrange than for longer distances from New Orleans to Hogansville, Newnan, Palmetto, or Fairburn, on like traffic carried under similar conditions and circumstances, and at less cost for the transportation service to Lagrange, are unreasonable and unjust to complainant, and subject him and other dealers at Lagrange, their traffic, and, as a locality, the city of Lagrange itself, to undue and unreasonable prejudice and disadvantage, and give undue preference and advantage to the localities of Hogansville, Newnan, Palmetto, and Fairburn, traffic thereto, and dealers and merchants doing business therein, in violation of sections 1 and 3 of the act.

939. Freight carried by defendants from New Orleans to either Atlanta or Lagrange, Ga., is through freight and entitled to through service, and the manner in which they conduct the service can not alter the character of such freight so as to make that carried for Lagrange partly local, while the freight to Atlanta is wholly through.

940. Defendants are engaged in carrying traffic over the short-line distance from New Orleans to Atlanta and intermediate points, including Lagrange, Ga., 71 miles southwesterly of Atlanta. There are various competing lines between New Orleans and Atlanta, and there is possible railroad competition between New Orleans and Lagrange. The relations of rates from New Orleans, New York, and other supply markets to Atlanta are, and for a long period have been, the subject of agreement or arbitration between the various lines. The rates from New Orleans to Atlanta are not unreasonably low. The rates from New Orleans to Lagrange are made by combining the New Orleans-Atlanta rates with the local rates of the Atlanta and West Point road back from Atlanta to Lagrange. Under these charges the competing Atlanta dealer can ship from New Orleans to Atlanta and then back to Lagrange as cheaply as complainant can ship direct from New Orleans to Lagrange, and complainant is unable to sell at points on the line between Atlanta and Lagrange. The defendant roads are all solvent, and the delivering carrier for both Atlanta and Lagrange earns 12 per cent annually for its stockholders. *Held*, Upon all the facts, that the rates from New Orleans to Lagrange are unreasonable in themselves and relatively as compared with the rates to Atlanta, and that higher rates from New Orleans to Lagrange than those charged from that city on like traffic to Atlanta are and would be unlawful.

Savannah Bureau of Freight and Transportation *et al.* v. Charleston and Savannah Railway Company *et al.* (7 I. C. C. Rep., 458.)

941. Wrongs caused by improperly adjusted rates over independent lines from competing cities to a common destination can not be corrected without authority to prescribe both the maximum and the minimum rate, and the Commission is not empowered to do either.

942. The "Plant System" of railways carries fertilizer from Savannah, Ga., to Valdosta, and also over the longer distance from Charleston to Valdosta, at no higher rate than it charges from Savannah. The Charleston rate is fixed by the competition of another and more circuitous line from that city to Valdosta, and the Plant System must meet that rate or get no fertilizer business from Charleston. *Held*, That under such circumstances the Plant System may properly make the same rate from Charleston as is made by the

longer line, and in so doing it does not unjustly discriminate against Savannah, though if the rate from Charleston to Valdosta were in any way subject to control, the conclusion might be otherwise.

943. Water competition between Charleston and Savannah compels a rate of 80 cents per ton on fertilizer carried by rail between those cities. Rates from Savannah to points in Georgia are fixed by the Georgia railroad commission. Water competition exists also between Savannah and Charleston and Jacksonville, Fla. By that mode of carriage the rate from both cities to Jacksonville is the same, and consequently the same also to points reached by rail from Jacksonville, as against the all-rail lines to those points. Circumstances over which a defendant all-rail line to Montgomery and other points in Alabama has no control also affect fertilizer rates from Savannah and Charleston to such Alabama points in some degree. *Held*, Upon all the facts, (1) That defendants' present differential of 50 cents more per ton from Charleston than from Savannah to points in Georgia other than common points is not unreasonable or prejudicial to Savannah. (2) That charging the same rate from Savannah and Charleston over the defendant all-rail lines to points in Florida in competition with ocean and rail competition from Savannah and Charleston is not unlawful. (3) That a lower differential as between Savannah and Charleston on fertilizer to points in Alabama reached by the Alabama Midland Railway than the differential established as between those cities on fertilizer to points in Georgia does not appear justified, and that sufficient difference is not made in rates to some stations in Florida; and defendants are advised to adjust such rates in accordance with suggestions stated, with leave to complainants to apply for an order if such adjustment is not made.
944. Higher rates charged by defendants on fertilizer from Charleston or Savannah to intermediate points between those cities than they charge over the entire distance between Charleston and Savannah are justified by the existence of water competition.
945. The circumstances and conditions governing the transportation of fertilizer from Charleston to Valdosta and various other stations are rendered substantially dissimilar from those applying in the transportation of fertilizer from Charleston over the same line to shorter distance localities by railway competition at Valdosta and said other stations, which controls and affects the rate, and higher charges on fertilizer to such shorter distance points are not in violation of the fourth section as interpreted by the United States Supreme Court in *Interstate Commerce Commission v. Alabama Midland Railway Company*. (168 U. S., 144.)

The Chamber of Commerce of the City of Milwaukee *v.* The Chicago, Milwaukee and St. Paul Railway Company; The Chicago and Northwestern Railway Company; The Chicago, St. Paul, Minneapolis and Omaha Railway Company; The Burlington, Cedar Rapids and Northern Railway Company; The Minneapolis and St. Louis Railway Company, W. H. Truesdale, receiver; The Illinois Central Railroad Company. (7 I. C. C. Rep., 481.)

946. Distances by shortest available routes are the proper distances on which to base comparison of differentials in grain rates from the same points of shipment to two different markets, situated as are Milwaukee and Minneapolis with reference to various sources of grain supply.
947. Although carriers serving but one of two competing cities may, by reducing their rates to the city served by them, prevent the correction of an unjust relation of rates to the two places from common points of supply, nevertheless it is the duty of the Commission to condemn such a relation of charges, and to indicate the basis upon which the rates should be readjusted.
948. On complaint of unlawful rates charged by defendants on wheat and other kinds of grain from points of shipment in Iowa, Minnesota, and South Dakota to Milwaukee, as compared with rates on like grain to Minneapolis, and of unlawfully higher rates on wheat than on flour from some of the shipping points. *Held*, That in many instances, and in varying degrees at different points, the differentials in grain rate to Milwaukee above rates in force to Minneapolis from shipping points on and south of the Southern Minnesota Division of the Chicago, Milwaukee and St. Paul Railway give Minneapolis undue and unreasonable preference and advantage, and subject Milwaukee to undue and unreasonable prejudice and disadvantage. That just and reasonable differentials in such rates would be obtained by applying the interstate distance tariff of the Chicago, Minneapolis and St. Paul Railway or the Chicago and Northwestern Railway to the short-line mileage from the several points of shipment to Minneapolis and Milwaukee. That just and reasonable rates to Milwaukee would be made by adding such

differentials to rates from time to time in force to Minneapolis, and any higher rates to Milwaukee would be relatively unreasonable and unjust to that city. That charging any higher rate on wheat than on flour between the same points and on the same line is unjust discrimination and unlawful. Cattle Raisers' Association of Texas v. Fort Worth and Denver City Railway Company and others. (7 I. C. C. Rep., 513.)

949. The Chicago Live Stock Exchange, a corporation whose members are persons engaged in the sale of live stock upon commission at Chicago, and the object of which is to promote the interests of its members in the sale of such live stock, may under section 13 of the act to regulate commerce maintain a proceeding to correct an unreasonable freight rate upon live stock from various points to Chicago; and this, notwithstanding that certain by-laws and proceedings of the corporation are in violation of that statute of the United States commonly known as the anti-trust law.
950. The defendant, the Union Stock Yards and Transit Company, having the option under its charter of becoming a common carrier or not, elected to and did become such carrier for dead freight to and from the lines of other carriers in the city of Chicago, but it did not so elect to engage in the carriage of live stock between such lines and its stock yards in Chicago. It imposes a trackage charge on other defendants for the use of its tracks in the transportation of live stock to and from the stock yards, and such transportation is conducted wholly by such other defendants. *Held*, That the Stock Yards Company is not a common carrier engaged in the transportation of live stock within the meaning of section 1 of the act to regulate commerce, and is therefore not subject to regulation in this proceeding.
951. Defendant common carriers undertake to carry live stock through different States to the Union Stock Yards in Chicago, and until delivery is made at such yards the live stock is interstate commerce and subject to the act to regulate commerce.
952. When carriers forming a through line and dividing the through rate also designate a certain rate for performance of a particular service, and it appears in proof that but one of the carriers is responsible for or interested in the latter charge, it is proper on complaint to deal with that particular carrier and that particular rate, irrespective of the other rates which make up the aggregate charge.
953. Section 2 of the act prohibits unjust discrimination between individuals through charging different rates for like service under substantially similar circumstances and conditions, and does not prevent a railroad company from absorbing a terminal charge on live stock in one market and exacting such a charge for terminal service in another city which is reached by a different line.
954. The imposing by a carrier of a terminal charge at one live stock market, while it does not impose a similar charge at another competing market, is not necessarily an undue preference under the third section of the act.
955. Nor is the imposition at some locality of a terminal charge upon live stock, while no similar charge is imposed on dead freight, necessarily a discrimination, under the third section, against live stock and in favor of dead freight.
956. While the decision of the United States circuit court of appeals upon the same set of facts, but not between the same parties, has not the technical effect of a previous adjudication, it ought to be and is considered in this case conclusive upon the Commission as to the questions involved and decided.
957. Live stock shipped to Chicago is necessarily delivered for marketing at the yards of the Union Stock Yards and Transit Company. In reaching its destination, carloads of live stock pass over the tracks of that company, which connect the various lines of the defendants with its yards. For many years the Union Stock Yards and Transit Company has given the use of its tracks for this purpose, and the defendants have performed the service of moving without charge. Beginning June 1, 1894, the stock yards imposed a trackage charge upon each car moving in or out. Thereupon the various defendants agreed to and did impose and collect a terminal charge of \$2 per car for the switching of all cars of live stock to the stock yards, in addition to the regular Chicago rate. *Held*, that upon the circumstances of this case the defendants might reimburse themselves for the trackage charge imposed by the Union Stock Yards and Transit Company, but that they ought not to exact any compensation for their services which they previously rendered gratuitously, and that the imposition of more than \$1 per car as such terminal charge on live stock was in violation of section 1 of the act to regulate commerce.

958. The case is continued upon the question of reparation, for proof of damages by members of the complaining Cattle Raisers' Association, all questions as to such reparation being reserved until such proof is made.

Cattle Raisers' Association of Texas v. Fort Worth and Denver City Railway Company and others. (7 I. C. C. Rep., 555 a.)

959. Defendants filed petition for rehearing, alleging error in the conclusions set forth in the report and opinion of the Commission, wherein it was held that a terminal charge of \$2 per car imposed by defendant carriers at Chicago for delivery of live stock at the Union Stock Yards in that city is unreasonable and unjust and that exaction of more than \$1 per car for such service is unlawful, under section 1 of the Act to Regulate Commerce. *Held*, Upon hearing of the parties and reconsideration of the record, that there was no error in the original determination; and, further, that the charge complained of and any charge for the terminal service at Chicago in excess of \$1 per car constitutes undue prejudice to Chicago under section 3 of the statute.

American Warehousemen's Association v. Illinois Central Railroad Company *et al.* (7 I. C. C. Rep., 556.)

960. Any person or association is entitled to complain before the Commission of failure on the part of carriers to publish and enforce transportation or terminal charges, rules and regulations, and that such failure results from special privileges allowed to shippers on many important lines.
961. In proceedings involving issuance of an order concerning the publication and enforcement of transportation or terminal charges, rules and regulations, investigation is useful to enable the Commission to determine what, if any, administrative order should be directed to defendant carriers, and whether such order should be made to apply to all carriers subject to the regulating statute.
962. Upon investigation of alleged unlawful practices of carriers in granting free storage of freights and other specified privileges to shippers. *Held*, That charges made by carriers for transportation and terminal services, and all rules and regulations which in any wise change, affect, or determine the aggregate compensation paid therefor, are required by the statute to be shown upon their published rate schedules; and under such requirement it is the duty of all carriers subject to the act to so publish and thereupon enforce each and every of their charges, rules, and regulations concerning the storage of freights, diversion of cars to shippers' use, distribution of freight in part-lots, reconignment of freight, and all kindred concessions or privileges to shippers, and to refrain from affording any such concession or privilege without due publication thereof in such schedules. That in view of the very general allowance in various forms of some or all of the privileges involved, a general order directed to all carriers subject to the act to regulate commerce should be issued.
- In the matter of the application of The Great Northern Railway Company, The Northern Pacific Railway Company, The Burlington, Cedar Rapids and Northern Railway Company, The Chicago and Grand Trunk Railway Company, The Chicago, Burlington and Northern Railroad Company, The Chicago, Burlington and Quincy Railroad Company, The Chicago Great Western Railway Company, The Chicago, Milwaukee and St. Paul Railway Company, The Chicago, Rock Island and Pacific Railway Company, The Chicago, St. Paul, Minneapolis and Omaha Railway Company, The Minneapolis and St. Louis Railroad Company, The Wisconsin Central Lines, The Grand Trunk Railway Company of Canada, The Wabash Railroad Company, The Michigan Central Railroad Company, and The Toronto, Hamilton and Buffalo Railway Company for a suspension of the rule of the fourth section of the act to regulate commerce.
963. Upon application for relief from the operation of the fourth section, and showing that the passenger rates of the Canadian Pacific Railway between points in the Province of Manitoba and contiguous territory and points on the Detroit and St. Clair rivers and easterly thereof in Canada and that portion of New England reached directly by the petitioners were from \$5 to \$16 less than the rates charged by the American carriers between the same points, and that under such difference in rates the traffic had been entirely diverted from the United States lines, a temporary order was granted authorizing the petitioners to charge less for carrying passengers between such points in either direction than they do for transporting passengers for shorter distances to intermediate points, but not less than those charged by the Canadian Pacific Railway between the same points.

In the matter of the application of The Atchison, Topeka and Santa F6 Railway Company and others for a suspension of the fourth section. (7 I. C. C. Rep., 593.)

964. The Canadian Pacific Railway, operated through the Dominion of Canada, connects with lines which reach various sections of the United States, and that railway is thereby enabled to engage in the carriage of passengers between numerous points in the United States, and of passengers traveling to and from the Klondike region, in the Dominion of Canada, in competition with lines wholly within the United States and subject to the provisions of the act to regulate commerce. This foreign carrier has greatly reduced passenger fares currently in effect on such traffic, including those in force from Boston and other Eastern points to St. Paul, Minn., and points on the Pacific coast, and from St. Paul to Pacific coast destinations, without the concurrence of its connecting American lines; and it makes such reduced rates effective by including therein these separately established rates of such connecting lines. The competing American lines must either meet the reduced rates of such foreign carrier or lose their share of the traffic, and they can not make such reduced rates apply at intermediate points without suffering large loss of necessary revenue: *Held*, That the petitioning American carriers should be relieved temporarily from the operation of the fourth section so that they may meet the competitive passenger rates of the Canadian Pacific Railway Company, without making such rates effective on passenger traffic to or from intermediate points on their respective lines.

Savannah Bureau of Freight and Transportation, John W. Huger, Armin B. Palmer, and Albert L. Stokes *v.* Charleston and Savannah Railway Company; Savannah, Florida and Western Railway Company; Northeastern Railroad Company of South Carolina; Ashley River Railroad Company. (7 I. C. C. Rep., 601.)

965. Passenger fares on the Charleston and Savannah Railway between Savannah, Ga., and points in South Carolina exceed the combined State rates now in force, but most of them, including the fare between Savannah and Charleston, are less than the sum of State rates in effect prior to the South Carolina statute of March 9, 1896, which limits passenger fares in that State to $3\frac{1}{4}$ cents per mile unless otherwise provided by the State railroad commission, and abrogates a special rate of 4 cents a mile provided for this railway in an act of 1884. The interstate fare between Savannah and Charleston is equal to 3.826 cents per mile. Round-trip tickets between Savannah and Charleston, limited to ten days, are sold by the railway for \$7, or about 3 cents a mile. The conditions governing local passenger traffic in South Carolina on the Charleston and Savannah Railway and those applying on the interstate passenger service of that railway between Savannah and Charleston are substantially dissimilar: *Held*, That the Federal statute contains no provision under which the interstate fares must necessarily be reduced because the South Carolina mileage rate was lowered by the State act of March 9, 1896, or be varied according to a different mileage rate which may be fixed by the State commission. *Held, further*, That the interstate fares of the Charleston and Savannah Railway between Savannah, Ga., and points in South Carolina are not unlawful upon the evidence in this case.

New York Produce Exchange *v.* The Baltimore and Ohio Railroad Company; The Baltimore and Ohio Southwestern Railway Company; The Pittsburg and Western Railway Company; The Chesapeake and Ohio Railway Company; The Cleveland, Cincinnati, Chicago and St. Louis Railway Company; The New York, Lake Erie and Western Railroad Company; The Chicago and Erie Railroad Company; The Grand Trunk Railway Company of Canada; The Chicago and Grand Trunk Railway Company; The Delaware, Lackawanna and Western Railroad Company; The Lehigh Valley Railroad Company; The Allegheny Valley Railway Company; The Pennsylvania Railroad Company; The Philadelphia, Wilmington and Baltimore Railroad Company; The Pennsylvania Company; The Northern Central Railway Company; The Pittsburg, Fort Wayne and Chicago Railway Company; The Pittsburg, Cincinnati, Chicago and St. Louis Railway Company; The Terre Haute and Indianapolis Railroad Company; The New York Central and Hudson River Railroad Company; The Lake Shore and Michigan Southern Railway Company; The Michigan Central Railroad Company; The Pittsburg and Lake Erie Railroad Company; The West Shore Railroad Company; The Toledo, Peoria and Western Railway Company; The New York, Chicago and St. Louis Railroad Company; The Wabash Railroad Company; The New York, Ontario and Western Railroad Company; The Philadelphia and Reading Railroad Company; The Central Railroad Company of New Jersey; The Boston and Albany Railroad Company; The Erie Railroad Company; The Detroit, Grand Haven and Milwaukee Railway

Company; The Grand Rapids and Indiana Railroad Company; John K. Cowan and Oscar G. Murray, as receivers of The Baltimore and Ohio Railroad Company; Thomas M. King, as receiver of The Pittsburg and Western Railway Company; and Joseph S. Harris, Edward M. Paxson, and John Lowber Welsh, as receivers of The Philadelphia and Reading Railroad Company. (7 I. C. C. Rep., 612.)

966. Railway companies may make whatever rates, form whatever lines, and establish whatever differentials they deem best for the purpose of securing and conducting transportation, provided the just interests of the public are not sacrificed thereby; and whether in so doing they act wisely or unwisely, fairly or unfairly between themselves, is not for the Commission to determine; the jurisdiction of the Commission is confined to inquiring whether the situation which the carriers have created is in violation of the act to regulate commerce.

967. Railway companies are not prohibited by section 3 of the act from preferring one locality over another unless the preference is undue or unreasonable, but a preference which is without legitimate excuse is, in and of itself, undue and unreasonable.

968. Under decisions of the United States Supreme Court (Import Rate Case, Interstate Commerce Commission v. Texas & P. R. Co., 162 U. S., 197, 40 L. ed., 940, 5 Inters. Com. Rep., 405, and the Troy Case, Interstate Commerce Commission v. Alabama Midland R. Co., 168 U. S., 144, 42 L. ed., 414), railway competition may, but it does not necessarily, justify a preference to a particular locality or commodity; and therefore, granting that discrimination against a locality which is based on such competition is excusable in theory, the question still remains whether under the third section it is undue or unreasonable, and that question is one of fact in each case.

969. Carriers frequently disregard distance in making their rates, and they may lawfully do so under some circumstances; but distance should be regarded whenever possible, and no previous decision is authority for a ruling that a carrier may be compelled to disregard it for the purpose of placing two communities upon a commercial equality.

970. Upon complaint brought on behalf of New York City, and alleging that differentials, allowed by the defendant carriers on grain, flour, and provisions from Chicago and other Western points, of 2 cents to Philadelphia and 3 cents to Baltimore below the rates to New York, are unlawful under section 3 of the act to regulate commerce: *Held*, That the differentials are legitimately based upon the competitive relations of the carriers; that it does not appear upon the present record that the carriers have exceeded the limit within which they are free to determine for themselves, and, accordingly, that the differentials complained of do not result in unlawful preference or advantage to Philadelphia or Baltimore over the city of New York.

Board of Railroad Commissioners of South Carolina v. Florence Railroad Company *et al.* G. P. Allen *et al.* v. Carolina Midland Railway Company *et al.* Ridge Fruit and Melon Growers' Association of South Carolina v. Southern Railway Company *et al.* (8 I. C. C. Rep., 1.)

971. On complaint that rates charged by defendants for the transportation of melons in carloads from shipping points in South Carolina to New York and other points in Northern and Northeastern States were unjust and unreasonable, it appeared that the rates were lower than those in force between the same points on cotton and general merchandise, although greater speed and some other exceptional facilities are involved in the transportation of melons from South Carolina; and that the rates per ton per mile afforded by the melon rates ranged from 7.6 mills to 1.1 cents, and for most of the defendant roads were less than the average receipts per ton per mile from all freight. The evidence was insufficient to warrant an estimate of the cost of production or the results of sales during the shipping season: *Held*, That the rates complained of were not shown to be unjust or unreasonable, and that the petitions should be dismissed without prejudice.

Dallas Freight Bureau v. Texas and Pacific Railway Company and others. (8 I. C. C. Rep., 33.)

972. Upon complaint that a rate of 75 cents per hundred pounds on cotton from Dallas, Tex., to New Orleans, La., is unreasonable and should not exceed 55 cents per hundred pounds, it appeared that such rate also applied as a common-point rate from substantially all the cultivated portion of Texas, and that reduction of the rate from Dallas would involve corresponding reductions from nearly the whole State; that the rate to New Orleans is determined by adding a differential of 10 cents to the rate to Galveston, and that such differential is reasonable; that the Texas Railroad Commission fixes the Galveston rate and has reduced such rate from 65 to 60 cents during the pendency of this proceeding, such action resulting, under main-

tenance of the differential, in like reduction of the rate to New Orleans; that about 65 per cent of Texas cotton passes through Galveston and about 25 per cent through New Orleans, and reducing only the New Orleans rate would result in diverting more of the traffic from the port of Galveston. *Held*, That while the rate from Dallas to New Orleans does not appear to be altogether reasonable, the Commission is not satisfied, in view of the control exercised and the action taken by the Texas commission, that it ought to interfere with the present adjustment.

973. Circumstances and conditions governing the transportation of freight articles by defendants from New Orleans, La., to Kansas City, Mo., and to Dallas, Tex., an intermediate point on the same line, are rendered substantially dissimilar by the competition of carriers by water and rail from New Orleans to Kansas City which controls and affects the rates, and defendants' present higher charges for the shorter distance to Dallas (which are conceded to be reasonable in themselves) are not in violation of section four of the act to regulate commerce.

B. Brockway et al., *v.* The Ulster and Delaware Railroad Company; The West Shore Railroad Company; and the New York Central and Hudson River Railroad Company as lessee of the West Shore Railroad. (8 I. C. C. Rep., 21.)

974. Petitioners alleged error in that part of the decision and order in *Milk Producers' Protective Association v. Delaware, Lackawanna and Western Railroad Company* (7 I. C. C. Rep., 92), which authorizes a line composed of the Ulster & Delaware and West Shore railroads to charge fourth-group rates on milk and cream shipped to Weehawken from stations on the Ulster and Delaware Railroad which would otherwise take the lower rates ordered in that case for third-group distances over other lines; such exception having been granted by the Commission on account of unusually difficult grades over the Catskill Mountains, and the further fact that all of the milk carried by the Ulster and Delaware is gathered beyond the mountains at distances of 132 to 175 miles from the Weehawken terminal. *Held*, That there was no material error in the original decision, and that the petitions should be dismissed.

Listman Mill Company *v.* Chicago, Milwaukee and St. Paul Railway Company. (8 I. C. C. Rep., 47.)

975. Defendant's charges on grain originating at points on its Southern Minnesota division, milled in transit at La Crosse, Wis., and forwarded as product to Milwaukee or Chicago are not more than $2\frac{1}{2}$ cents per 100 pounds in excess of its wheat rates from the same points of origin to Milwaukee or Chicago, and such milling rates at La Crosse, as related to defendant's wheat rates, or as affecting the competitive relations of complainant with millers at Milwaukee, are not unjust or otherwise unlawful.

976. La Crosse is on a direct route from points on defendant's Southern Minnesota division to Milwaukee or Chicago, and Minneapolis is not, but the short-line distances from points on that division are considerably less to Minneapolis than to La Crosse. Defendant's charges on wheat from Southern Minnesota division points to La Crosse and Minneapolis are the same, and its rates on flour from those cities to Milwaukee or Chicago are also the same; but La Crosse has milling or transit rates which are less than the sum of such locals, while at Minneapolis shipments to and from the mills are made under established in and out charges. Transit rates at La Crosse on wheat from points on said division to Milwaukee or Chicago bear the same relation to wheat rates from such points that the rates on wheat in and on flour out of Minneapolis bear to grain rates from points on defendant's more northerly Hastings and Dakota division. Alterations in any of defendant's flour rates from Minneapolis are followed by corresponding changes in transit rates at La Crosse. The legality of milling in transit rates is not involved, and what, if any, prejudice results to complainant under transit milling at La Crosse and regular in and out rates at Minneapolis is not shown. *Held*, That no undue prejudice results to La Crosse or the complaining miller in that city from milling rates enforced by defendant at La Crosse or the relations of such rates to those established by defendant for Minneapolis.

In the matter of the Alleged Disturbance in Passenger Rates by the Canadian Pacific Railway Company. (8 I. C. C. Rep., 71.)

977. Upon investigation of disturbances in transcontinental passenger rates resulting from competition between the Canadian Pacific Railway Company and American lines, it was held that, at the present time, the Canadian Pacific ought not to have a differential on the passenger business between New York and San Francisco.

Phillips, Bailey & Co.; Stratton, Seay & Stratton; Cheek, Webb & Co.; Orr, Hume & Co.; R. F. Weakley & Co.; Orr, Jackson & Co.; J. Cooney & Co.; Jackson, Mathews & Harris; Kirkpatrick & Co. *v.* The Louisville and Nashville Railroad Company; The New Orleans and Northeastern Railroad Company; The Alabama Great Southern Railroad Company; The Cincinnati, New Orleans and Texas Pacific Railway Company, and S. M. Felton, the Receiver thereof; The Nashville, Chattanooga and St. Louis Railway Company; The Illinois Central Railroad Company; The Chesapeake, Ohio and Southwestern Railroad Company, and John Echols and St. John Boyie, the Receivers thereof; The Southern Railway Company. (8 I. C. C. Rep., 93.)

978. Where carriers exact higher rates for a shorter than a longer haul over the same line in the same direction, the shorter haul being included within the longer, they are amenable, not only under section 4, but also under sections 1 and 3, of the act to regulate commerce.

979. Where the merchants of two localities compete for business in the same territory, discrimination in rates in favor of the one and against the other locality necessarily gives the former an advantage and works a prejudice to the latter in that competition.

980. The exaction of as high rates for a shorter haul as for a longer haul over the same line in the same direction, the shorter haul being included within the longer, is itself a discrimination, and, if not justified by a substantial dissimilarity of circumstances and conditions, is an unjust discrimination.

981. In respect to competition as justifying discrimination, the Supreme Court of the United States has only gone to the extent of holding that it "may in some cases" be such as, "having due regard to the interests of the public and of the carrier, ought justly to have effect upon rates," and that "the mere fact of competition, no matter what its character or extent," does not "necessarily relieve carriers from the restraints of the third and fourth sections" of the act to regulate commerce. *Interstate Commerce Commission v. Alabama Midland R. Co.*, 168 U. S. 164, 167, 42 L. ed. 422, 423.

982. The Supreme Court of the United States, while denying power in the Interstate Commerce Commission to enforce the provision of section 1 of the act to regulate commerce—namely, that all rate charges "shall be reasonable and just,"—by orders prescribing reasonable maximum rates, expressly recognizes the authority and duty of the Commission to enforce sections 2, 3, and 4 of the act. *Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co.*, 167 U. S. 506, 42 L. ed. 256.

983. The burden is upon the carrier in all cases where a departure from the rule of the law is proved, to show clearly that this departure is justified. It is not sufficient to raise a mere doubt. "Where the matter is not clear, the object and policy of the law should prevail." *Missouri P. R. Co. v. Texas & P. R. Co.* 31 Fed. Rep. 862, 4 Inters. Com. Rep. 434.

984. "Whether the circumstances and conditions of carriage have been substantially similar or otherwise are questions of fact depending on the matters proved in each case." *Interstate Commerce Commission v. Alabama Midland R. Co.* 168 U. S. 170, 42 L. ed. 424; *Missouri P. R. Co. v. Texas & P. R. Co.* 31 Fed. Rep. 862, 4 Inters. Com. Rep. 434.

985. While it may be in this case that as high rates on sugar and molasses for the shorter haul from New Orleans to Nashville than for the longer hauls to Louisville are justified, the evidence does not show such a substantial dissimilarity of circumstances and conditions as will authorize higher rates on such transportation to Nashville than are charged to Louisville.

Edward Kemble v. Boston and Albany Railroad Company and others. (8 I. C. C. Rep., 110.)

986. It is not, as matter of law, a violation of the act to regulate commerce to make a lower rate to the port of export upon traffic which is exported than upon that which is locally consumed, for the export rate is in essence the division of a through rate.

987. The decision of the commission in *New York Board of Trade and Transportation v. Pennsylvania Railroad Company et al.* having been overruled by the United States Supreme Court in *Texas and Pacific Railway Company v. Interstate Commerce Commission*, 162 U. S., 197, 40 L. ed., 940, 5 Inters. Com. Rep., 405, it follows that carriers are not, as a matter of law, prohibited from making rates from points in the United States to points in foreign countries or from points in foreign countries to points in the United States, of which the inland division or share accruing to carriers within the United States is less than the tariff rate of such carriers on domestic shipments of similar commodities.

988. Through tariffs showing total charges on export traffic from interior points in the United States to destinations in foreign countries can not, owing to the fluctuation in ocean rates, usually be determined and published in accordance with section 6 of the act to regulate commerce; and if the inland carrier publishes and maintains its division of the through export rate it apparently does all that it can do and all that it is required to do under that section; but if the inland carrier, instead of receiving a fixed inland division, makes through rates in fact of which its division fluctuates, a question arises as to the publication of such rates, which is not passed upon in this proceeding. *New York, New Haven and Hartford Railroad Company v. Platt*, 7 Inters. Com. Rep., 323, cited and distinguished.
989. Import and export traffic is not removed from the jurisdiction of the commission by the decision of the United States Supreme Court in *Texas and Pacific Railway Company v. Interstate Commerce Commission*, 162 U. S., 197, 40 L. ed., 940, 5 Inters. Com. Rep., 405, but, on the contrary, the effect of that decision is to extend such jurisdiction; and the commission has full authority to pass upon the grievance of any individual or locality which is alleged to arise from rates upon export or import goods as compared with rates on domestic merchandise.
990. Defendants make two rates on grain and sixth-class merchandise from Chicago to Boston. If the commodity is for local consumption the rate is 2 cents above the rate to New York; but if the commodity is to be exported the Boston rate is the same as the New York rate. The export traffic is delivered to the ocean carrier at East Boston, which is a few miles more distant than Boston from Chicago, and the export rate, which is essentially the inland carrier's division of a through export rate, applies, in fact, only to East Boston. The domestic rate to Boston is substantially as fixed by the commission in *Kemble v. Lake Shore and Michigan Southern Railway Company*, 3 Inters. Com. Rep., 830, 5 I. C. C. Rep., 166. Whether, as matter of fact, the domestic rate to Boston is unreasonably high, or whether the export rate through Boston unduly discriminates against Boston, are questions which were involved in cases heretofore decided by the commission; and their reconsideration in this case is not warranted by any facts developed at the hearing. *Held*, That the fourth section is not violated by the lower export rate to East Boston than the domestic rate for the shorter distance to Boston, and that the petition should be dismissed.

In the matter of alleged unlawful rates and practices in the transportation of cotton by the Kansas City, Memphis and Birmingham Railroad Company and others. (8 I. C. C. Rep., 121.)

991. Defendants' rates on cotton from Memphis to Atlantic and Gulf ports and various eastern cities are lower than those from intermediate cotton-shipping stations; but whether such rates violate the fourth section of the act to regulate commerce is not determinable upon the record as made in this case.
992. In the practice of "floating cotton" the essential transportation feature is carrying the cotton to a compress, receiving it again in the compressed state, and transporting it to destination at the through rate in force from the point of origin. The practice benefits both the railroad company and the producer and tends to place noncompetitive points upon an equality with more distant competitive localities from which lower rates are in force. It does not unjustly discriminate against dealers in the city of Memphis who decline to take advantage of the privilege. The cotton is graded as well as compressed at the point of stoppage. The destination of the cotton is usually changed at the compress point; the identity of a cotton shipment is not preserved at the point of grading and compression, and the ownership of the cotton may change at the compress station. The question is whether the shipment is to be considered through and entitled to a through rate or as local and calling for application of charges in effect to and from the compress point. *Held* (1), That the carrier may, as part of a contract for through shipment, allow the cotton to be stopped off for the purpose of grading and compression; but the privilege enters into and becomes part of the service covered by the rate and should be specified in the published tariffs. (2) That the determinative feature of a through shipment is the contract, and if the cotton starts and proceeds upon a contract for through shipment, as is shown to be the fact in this case, it may be considered as a through shipment and be given the benefit of a through rate. In the matter of alleged unlawful rates and practices in the transportation of grain and grain products by the Atchison, Topeka and Santa Fe Railway Company and others, 7 I. C. C. Rep., 240, cited and distinguished.

The Board of Trade of the City of Dawson, Ga., v. the Central of Georgia Railway Company and the Georgia and Alabama Railway Company. (8 I. C. C. Rep., 142.)

993. Upon complaint that defendants violate the act to regulate commerce by charging higher freight rates to Dawson, Ga., than to Eufaula, Ala., and Americus and Albany, Ga., towns in the section of country surrounding Dawson, and after giving full and due consideration to the conditions and circumstances, including situation of the localities, possible transportation via the Chattahoochee River, railway competition and the competition of markets, and the basing-point system of rate making as practiced in the South: *Held* (1) That it is undue preference for the Central of Georgia Railway Company to charge any higher rates on freight from New York or other Eastern cities to Dawson than those which are maintained from the same points of shipment to Eufaula. (2) That it is undue preference for the Central of Georgia Railway Company or the Georgia and Alabama Railway Company to charge any higher rates on freight from Nashville, Cincinnati, and Chattanooga to Dawson than those in effect from the same points to Albany. (3) That it is undue preference for the Central of Georgia or Georgia and Alabama to charge any higher rates on freight from New Orleans to Dawson than those which are in force from New Orleans to Americus or Albany. (4) That so long as the Southern basing-point system of rate making is adhered to it is undue preference for the Central of Georgia or the Georgia and Alabama to charge any higher freight rates to Dawson than those which may be in effect to Americus from any of the points of shipment above mentioned.

Grain Shippers' Association of Northwest Iowa v. Illinois Central Railroad Company and others. (8 I. C. C. Rep., 158.)

994. A slight reduction in freight rates from a large extent of territory upon a staple commodity like grain may result in very largely diminishing the revenues of the carrier, as well as determining whether or not grain can be raised at a profit, and, ultimately, whether it shall be raised at all. Questions of this nature, involving as they do great interests to both parties, and interests which mean not the loss or gain of a given sum for a single year, but similar loss or gain year after year, ought not to be determined except upon some reasonably satisfactory showing, if the material for such showing exists.

995. While value is a most important element to be considered in fixing rates, it plainly can not be made an arbitrary standard independent of all other considerations.

996. If a carrier can profitably make a low rate for the purpose of obtaining traffic in existence which would otherwise pass over a competing line, then it may profitably, under some circumstances, make a low rate for the purpose of bringing into existence traffic which would not otherwise pass over any line.

997. The capitalization of a railroad, to have consideration in cases involving the readjustment of rates, should be accompanied by a history of the capital account, the value of the stock and various securities, and the actual cost and value of the property itself. To make the capital account of railroads the measure of legitimate earnings would place, as a rule, the corporation which has been honestly managed from the outset under enormous disadvantages.

998. It is not enough for defendant carriers so say, in a case involving the relation of rates, that competition justifies or requires the thing which is done. Something must be known of the nature and extent and effect of that competition.

999. The transportation of grain eastward from Kansas City and from Sioux City and other points in the territory adjacent to Sioux City is subject to competition between the carriers; but while reduced rates have resulted from the competition at Kansas City the competition in northwest Iowa has been more effectively restrained by an agreement formerly in effect, and, since such agreement was canceled, by continuance of rates without substantial reduction. The rate on corn to Chicago from most points in western Iowa is 17 cents per 100 pounds. Examination of the rates and rate changes for a period of years indicates that a rate of 15 cents on corn from Kansas City to Chicago should be applied at all Missouri River points, but the evidence is not sufficient to enable a definite conclusion. It does appear, however, that the rates on grain from Sioux City and other points in a limited section of northwest Iowa are too high. *Held*, That the 19-cent rate on corn from Sioux City and other points in adjacent territory should be reduced, the 17-cent rate on corn now in effect from most points in western Iowa should

be extended to Sioux City and points in Iowa on and east of the Sioux City and St. Paul Railroad (now part of the Chicago, St. Paul, Minneapolis and Omaha system), and corresponding reduction should be made from other points in southeastern South Dakota. *Held further*, That while no opinion is expressed as to what is the proper relation of the rates on wheat and corn from Sioux City and adjacent territory, the difference of 4 cents which now prevails from most shipping points in that section should not be exceeded.

1000. An order granting reparation to shippers for an unreasonable rate must be based upon evidence and a finding that the rate was unreasonable at the time it was paid.

In the matter of export rates from points east and west of the Mississippi River. (8 I. C. C. Rep., 185.)

1001. It is neither sound in principle nor equitable in practice for railway lines to create artificial differences in market conditions by an arbitrary differential in rates whereby the product of one section of the country is assigned to one market and the product of another section of the country to another market.

1002. In 1898 defendants' rates to New York on export corn were 19 cents per 100 pounds from Peoria and $17\frac{1}{2}$ cents from Chicago, and from the Mississippi River the $17\frac{1}{2}$ -cent Chicago rate applied as a proportional rate on export corn coming from west of that river. In January and February, 1899, the proportional rate from the river was made $13\frac{1}{2}$ cents, a reduction of 4 cents; the Chicago rate was made 16 cents, and the Peoria rate $17\frac{1}{2}$ cents, a reduction of $1\frac{1}{2}$ cents. This rate from the river had always been higher, or at least no lower, than the rate from Chicago. Higher rates are in effect on export corn originating at the river crossings, and local and proportional rates considerably above the proportional export rate are also in force from river points on domestic shipments. Under former rates Illinois corn went forward freely for export through Atlantic ports, but under present rates it is stored in elevators or cribbed upon the farms, while Iowa corn moves in large quantities across Illinois farms and through Illinois markets on its way to the seaboard and foreign points. Large quantities of corn are held in store at Chicago and Peoria. Through rates to the Atlantic seaboard apply from a large number of points in Illinois, but from numerous other localities in that State the corn must be shipped under local rates to and from points like Chicago and Peoria. Some of these through rates and many of the combination rates are higher than through or combination rates on export corn from points in Iowa. Facts relating to competition of routes leading to Gulf ports and to application of "transit rates" on export corn are stated. *Held*, (1) That through or total combination tariff rates on export corn from points in Illinois, which are higher than the through or combination rate on corn from any point in Iowa, are unlawful under section 3 of the act to regulate commerce. (2) That the evidence is not sufficient to enable the Commission to determine what, if any, other correction should be made in the present rate relations, and that the boards of trade of Chicago and Peoria, complainants herein, have leave to apply for further hearing in regard to the effect of the changes made by defendants in the general rate adjustment.

1003. The propriety of present rates in force on Iowa export corn is not considered, and no opinion is expressed concerning the legality of the "transit system," as allowed at Mississippi River crossings, Peoria and Chicago, nor as to whether the statute sanctions a system of local and proportional rates on domestic and export shipments from the Mississippi River, which results in four different rates on corn from the east bank of that river to the Atlantic seaboard.

1004. When rates established to apply between points within a single State are applied as part of combination rates on transportation between different States, such State rates, as well as the interstate rates with which they are combined, must be published at stations and filed with the Commission, as provided in section 6 of the act to regulate commerce.

In the matter of relative rates upon export and domestic traffic in grain and grain products and of the publication of tariffs relating to such traffic. (8 I. C. C. Rep., 214.)

1005. The act to regulate commerce applies to the transportation of export and import traffic, and the jurisdiction of the Commission over such traffic is not denied, but is distinctly affirmed and rather enlarged by the decision of the U. S. Supreme Court in *Texas and Pacific Railroad Company v. Interstate Commerce Commission*, 162 U. S., 197; 40 L. ed., 940; 5 Inters. Rep., 405.

1006. The act to regulate commerce does not, as matter of law, prohibit a carrier by railroad from making a through rate from a point within the United States to a foreign destination of which its division shall be less than the amount charged by it for the corresponding transportation of domestic merchandise to the port of export. Nor is it, as matter of law, in violation of the act for such carrier to make a lower rate to the port of export upon traffic which is exported than upon that which is locally consumed, for the export rate is in essence the division of a through rate. *Texas and Pacific Railroad Company v. Interstate Commerce Commission*, 162 U. S., 197; 40 L. ed., 940; 5 Inters. Com. Rep., 405, cited and applied. *Kemble v. Boston and Albany Railroad Company*, 8 I. C. C. Rep., 110, cited and approved.
1007. It is a question of fact whether rates upon export or import traffic, as well as those upon domestic traffic, are in contravention of the provisions of the act to regulate commerce.
1008. The act to regulate commerce was intended to and does apply, not only in cases of direct injury to particular individuals or industries, but also in cases involving indirect injury to the community as a whole, and in the absence of some justifying reason, it would not be right for American railroads to permanently transact business for foreigners at a less rate than that for which they render a corresponding service to American citizens.
1009. Market conditions, sometimes in case of wheat, but seldom in case of corn, may justify an export rate through the port of New York somewhat lower than the domestic rate, and Philadelphia, Baltimore, Norfolk, and Newport News usually take rates which are certain differentials below the New York rate on both domestic and export traffic. During the period of closed lake navigation the export and domestic grain rates to New York and the other ports mentioned should ordinarily be the same. Rates to other ports, including Boston and ports on the Atlantic north of Boston, and Galveston, New Orleans, and other Gulf ports may perhaps be properly made lower on export than on domestic traffic to enable them to compete for the export business. Such an adjustment of rates would be to the advantage of the carrier, and just alike to the American consumer and the American producer. But as the problem is primarily one for the carriers rather than this Commission, and some rate changes have been made by them during the progress of this proceeding, and the testimony indicates that the present disparities between domestic and export rates will not become permanent, no order is made in relation to this branch of the case.
1010. In the application of export grain rates the carriers should in no case make the rate from any point to the seaboard less than that from any intermediate point on the same line.
1011. Carriers engaged in the transportation of export flour from Minneapolis at a rate which is $1\frac{1}{2}$ cents less than the domestic rate to the port of export refuse to make any corresponding concession to intermediate millers. *Held*, That this is unjust and unlawful discrimination against such intermediate traffic, and that whatever line participates in such lower export rate on flour from Minneapolis must make a corresponding rate upon similar traffic from intermediate points.
1012. There may be instances where a carrier should be permitted to meet railroad competition without reference to its intermediate territory, but when the very existence of an important industry depends upon the carrier being required to treat intermediate territory as it does the more distant territory, the rule of no greater charge for the shorter distance clearly applies.
1013. Carriers largely engaged in transporting export flour have for many years made the same rate on wheat and flour, and such long-continued practice is evidence against any difference in rate on those commodities; but the presumption is not irrebuttable, for if it were the carriers could never change their tariffs or classifications.
1014. The profit to American millers in manufacturing flour for export is from 1 to 3 cents per 100 pounds, but the freight rates on wheat and flour for export show a difference in favor of the English miller of from 4 to 11 cents per 100 pounds, and, other things being equal, such discrimination is clearly prohibitive upon the American manufacturer. The published railroad rates on both wheat and flour for export have been the same up to a recent period, and the carriers have exacted such rates except where lower rates on wheat were induced by competition. Water competition on the Great Lakes limits rail rates to the various ports on both wheat and flour during the navigation season, and to a degree before the opening and after the close of navigation, and the published and actual water rates on wheat have been from 2 to 4 cents lower than those on flour. To a limited extent the cost of service may be greater in the transportation of export flour

than in that of export wheat. The export rate on flour includes delivery on board ship, while the rate on wheat ordinarily does not, and at New York an additional charge of about $1\frac{1}{2}$ cents per bushel for loading wheat is made. Exportation of flour has steadily increased, but for the last six years the increase has not been marked, and a decrease is shown by comparing exports in 1894 and 1898. *Held*, (1) That public policy and good railway policy alike seem to require the same rate on export wheat and export flour, but that the duties of the Commission are confined to administering the act to regulate commerce, and in view of all the conditions shown in the investigation a somewhat higher rate on export flour than on export wheat is not in violation of that statute. (2) That the published difference in rates is too wide, and that the rate on flour for export should not exceed that upon export wheat by more than 2 cents per 100 pounds. (3) That the relation of rates on domestic shipments of flour and wheat is not involved in this decision, as the export and domestic freights are handled under different conditions.

1015. Rates on export traffic must be published and filed in accordance with the provisions of section 6 of the act to regulate commerce.

1016. So-called through export rates made by adding the ocean rate, whatever it may be, to the inland rail rate, whatever it may be, are not analogous to joint rates made by joint arrangement between railway carriers subject to the statute in the sense that the total rate must be published and filed, and it is enough if the railway carrier publishes and maintains its own rate to the seaboard. But if there is in fact such a joint arrangement that the rate is a joint rate under the sixth section of the act to regulate commerce, then the entire through rate should be published, and not the inland division, which in that case might vary, while the entire rate remains the same.

A. J. Gustin *v.* The Atchison, Topeka and Santa Fé Railroad Company, and Aldace F. Walker, John J. McCook, and J. C. Wilson, receivers thereof; The Burlington, Cedar Rapids and Northern Railway Company; the Chicago and Alton Railroad Company; The Chicago, Burlington and Northern Railroad Company; The Chicago, Burlington and Quincy Railroad Company; The Chicago Great Western Railway Company; The Chicago, Milwaukee and St. Paul Railway Company; The Chicago and Northwestern Railway Company; The Chicago, Rock Island and Pacific Railway Company; The Chicago, St. Paul, Minneapolis and Omaha Railway Company; The Hannibal and St. Joseph Railroad Company; The Illinois Central Railroad Company; The Iowa Central Railway Company; The Kansas City, St. Joseph and Council Bluffs Railroad Company; The Minneapolis and St. Louis Railway Company, and W. H. Truesdale, receiver thereof; The Missouri Pacific Railway Company; The Rock Island and Peoria Railway Company; The St. Louis, Keokuk and Northwestern Railroad Company; The Wabash Railroad Company; The Union Pacific Railway Company, and S. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R. Coudert, receivers thereof; The Burlington and Missouri River Railroad in Nebraska. (8 I. C. C. Rep., 277.)

1017. The defendants, having engaged under their tariffs and course of business in the through transportation of traffic from Chicago and other points to Kearney, Nebr., over continuous lines formed by their connected roads, are required by the act to regulate commerce to make their rates on such transportation reasonable and otherwise in conformity with the provisions of that statute, and such duty is not avoided by the fact that the rates to Kearney may be combinations of rates to and from Omaha.

1018. The necessities of carriers often demand, and traffic conditions frequently warrant them in exacting, a share of through rates which gives them more per mile than that which results to a connecting carrier from the division accepted by it.

1019. The rate per ton per mile rule brings rates down to the narrowest point of scrutiny, and for that purpose is valuable; but it excludes consideration of other circumstances and conditions which enter into the making of rates, no matter how compulsory or imperious they may be, and it can not, therefore, be accepted as controlling in determining the reasonableness of rates.

1020. Combination rates always afford an advantage to the basing point, and entail some disadvantage upon the town to which the combined rates are applied, and when traffic is brought to the two places to be distributed in common territory the preferences and prejudices resulting from such rates must generally be held unreasonable and undue.

1021. Freight rates from Chicago and other eastern points to Kearney, Nebr., made by combining rates to and from Omaha, a point on the Missouri River, are not unreasonable in amount, and the evidence was insufficient upon the question whether such rates subject Kearney merchants to unlawful disadvantage.

In the matter of alleged violations of the act to regulate commerce by the St. Louis and San Francisco Railway Company. (8 I. C. C. Rep., 290.)

1022. The greater charge enforced by the respondent company for the shorter distance from Marshfield, Mo., than for the longer distances from Springfield and other more westerly stations, in the transportation of live poultry in carloads to Chicago, constitutes a departure from the general rule of the fourth section, which the carrier was bound to justify in this proceeding.
1023. The higher rate from an intermediate locality to a common destination also constitutes a prejudice to that locality and shippers and traffic therefrom, and a preference to the more distant localities and shippers and traffic therefrom, which, if found to be without sufficient excuse, must be held unreasonable and undue, and therefore in contravention of the third section.
1024. Respondent is engaged with other carriers in the through transportation to Chicago of freight from numerous points on its road, including Springfield and Marshfield, and it can not lawfully call itself merely a local carrier from Marshfield, while engaged in through carriage from Springfield and other points on its line, and thereby justify higher rates to Chicago for the shorter distance from Marshfield than for the longer distance from Springfield and more distant points of shipment. *Cincinnati, New Orleans and Texas Pacific Railroad Company v. Interstate Commerce Commission*, 162 U. S., 184, 40 L. ed. 935; 5 Inters. Com. Rep. 391; 16 Sup. Ct. Rep., 700, cited and applied.
1025. The rates enforced by the respondent company on live poultry in carloads to Chicago are higher from Marshfield than for the longer distances from Springfield and other more distant stations on its line, to and including Columbus, Kans. It meets the competition of other roads at Springfield and various junctions to the west of Springfield, yet nowhere west of Springfield does the respondent or any of its competitors make the greater charge for a shorter than for a longer distance on this traffic. Such rates on live poultry from Springfield and points west thereof are not unreasonably low. The respondent makes as low a rate to St. Louis from Marshfield as from Springfield. The circumstances and conditions applying from the points involved on the traffic in question are not substantially dissimilar. The investigation covered freight articles generally, but the testimony was confined to live poultry. *Held* (1) That the respondent has failed to justify such higher rate from Marshfield than from Springfield and other more westerly stations for the carriage of live poultry to Chicago, and that by keeping such higher rate in force it is acting in violation of the fourth and third sections of the act. (2) That the respondent should not insist upon making higher charges to Chicago from Marshfield than from more distant points of shipment upon other kinds of traffic, unless it is prepared to justify such action by showing an essentially different state of facts than appears in this proceeding.

Board of Railroad Commissioners of the State of Kansas v. Atchison, Topeka and Santa Fé Railway Company et al. (8 I. C. C. Rep., 304.)

1026. Distance is undoubtedly a factor, and perhaps ought to be a much more important factor, in the determination of rates, but in the present case, where the distances from the grainfields of Kansas to Kansas City, St. Louis, and Galveston vary from 100 to 1,000 miles, any attempt to adjust the rates on grain to those cities upon the sole basis of the rate per ton per mile would be impracticable.
1027. A decision by the Commission in one case is not necessarily controlling in all similar cases. Such decision hardly has the effect of an estoppel, and there is not the same reason for applying the maxim *stare decisis* which exists in courts of law. But when the relation in freight rates determines where and how business should be done, the decisions of this Commission fixing or approving a given relation should only be reversed for imperative reasons.
1028. The changes which have taken place in conditions governing the transportation of wheat and flour from Kansas points to destinations in Texas, although they have been material in some respects, are not sufficient to warrant interference in this case with the differential making the rate 5 cents higher on flour than on wheat, which was approved by the Commission in *Kauffman Milling Company v. Missouri Pacific Railway Company*, 4 I. C. C. Rep., 417; 3 Inters. Com. Rep., 400.
1029. Carriers of corn and corn meal from Kansas points to destinations in Texas enforce a differential of 7 cents per 100 pounds more on corn meal than on corn, and such difference prohibits the shipment of corn meal ground in Kansas points into Texas territory. The difference in cost of service need

not exceed 3 cents per 100 pounds, and the difference in value, greater liability to injury, and other conditions surrounding the transportation of such commodities do not justify the greater difference in the rate. *Held*, that the difference in rate of 7 cents against corn meal and in favor of corn unjustly discriminates against Kansas millers, and that the differential should not exceed 3 cents per 100 pounds.

1030. Several defendant carriers engaged in transporting wheat and corn from points in Kansas and Missouri and intermediate points to Galveston and New Orleans make lower export rates on those commodities from Kansas City, Mo., or points in that vicinity, than from some of the intermediate stations on their respective lines. These export rates are much lower than the corresponding domestic rates, in case of which the fourth section is invariably observed. The circumstances and conditions governing transportation of grain from the longer and shorter distance points are not substantially dissimilar. *Held*, that the higher rates from such intermediate points subject those localities to undue prejudice, and that if the carriers are allowed to make these low export rates they should in making them treat all intermediate territory alike, and desist henceforth from charging higher rates from the nearer stations than those in effect from the more distant points.
1031. In view of present conditions, no opinion is expressed as to the reasonableness of export grain rates from Kansas points to Galveston, or the reasonableness of local grain rates from Kansas and Missouri into Texas, or the relation of east-bound and south-bound export rates from Kansas points.

Chicago Fire Proof Covering Company v. Chicago and Northwestern Railway Company and The Pennsylvania Company. (8 I. C. C. Rep., 316.)

1032. The provision in section 3 of the act, that "this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business," refers to facilities for interchanging traffic between connecting lines; and providing such facilities is not involved in this proceeding.
1033. The varying cost to shippers in delivering freight to the carrier for shipment can have no bearing in a case which has sole reference to what are unlawful rates from the carriers' stations.
1034. Upon complaint that defendants charge unlawful rates on asbestos articles from Summerdale, Ill., to Lima, Ohio, and other eastern points, it appeared that Summerdale, although within the city limits of Chicago, is a station on the Chicago and Northwestern Railway, which for purposes of shipment and carriage is independent of the main depots of that company in Chicago; that it is a shorter-distance point, and Milwaukee and other places on the Milwaukee division of the Chicago and Northwestern north of Summerdale are longer-distance points, over defendants' established through line with reference to less than carload shipments to eastern destinations; that defendants have through rates in effect from stations north of Chicago, but on traffic from Summerdale the Pennsylvania Company insists upon a higher charge made by adding rates to and from the point of connection in Chicago; that these through rates were not denied to Summerdale before it became part of Chicago by extension of the city limits; and that the circumstances and conditions governing the transportation are not dissimilar. *Held*, that defendants' higher less than carload rates on asbestos articles from Summerdale than from points north of Chicago to and including Milwaukee, on shipments destined to Lima, Ohio, and other eastern points, are in violation of sections 3 and 4 of the statute.
1035. Defendants offer to carry asbestos material at established through joint rates to eastern points from stations north of Chicago, including Milwaukee; and by denying such rates on like shipments from Summerdale, an intermediate station, and exacting higher rates thereon, they subject complainant to undue prejudice in its competition with other dealers for the sale of asbestos articles and shipment thereof to eastern localities.
1036. Notwithstanding the contention that higher rates are lawfully in force on shipments from Summerdale than from Milwaukee and other more distant points to eastern localities, it appears that, under the tariffs in force over defendants' through line, the rates from Summerdale were actually the same as those from more distant stations, including Milwaukee, at the time a less than carload lot of asbestos pipe coverings was shipped by complainant from Summerdale to Lima, Ohio. *Held*, That in failing to apply the through Milwaukee-division rates from Summerdale on such shipment the defendants acted contrary to the requirements of section 6 of the act, and that complainant is entitled to recover the overcharge.

1037. Apparently the rates on carload shipments to the east from Summerdale should be as low as those in force to the same destination from Milwaukee, but as carload lots take somewhat different routing than less than carloads from Summerdale, and the evidence as to carloads was not specific, no opinion on that branch of the case is expressed, and complainant is granted leave to apply for further hearing.

George L. Castle v. Baltimore and Ohio Railroad Company. (8 I. C. C. Rep., 333.)

1038. Common carriers are bound by every principle of justice and of law to accord equal rights to all shippers who are entitled to like treatment, both in the receiving of supplies and the shipment of their products, and a carrier who, under any pretext whatsoever, grants to one shipper an advantage which it denies another violates the spirit and thwarts the purpose of the law.

1039. Complainant alleged that defendant had unjustly discriminated in rates and facilities for the transportation of sand against him and in favor of his competitors, but the evidence was not sufficient to show breach of legal duty on the part of the defendant, and the complaint was dismissed without prejudice.

George Tileston Milling Company v. Northern Pacific Railway Company.

City of St. Cloud, Minn. v. Northern Pacific Railway Company. (8 I. C. C. Rep., 346.)

1040. Rail lines between St. Paul and Duluth are part of lake and rail routes to New York, and such lines, operating under through rates with the lake carriers, cannot be heard to set up water carriage as competition via the lakes, in excuse of the rates which they themselves make in furtherance of that competition.

1041. Competition between railways does not, in and of itself, create dissimilarity in "circumstances and conditions," but it is a factor which may and perhaps ought to be taken into account in cases arising under the fourth section of the statute. The question is largely one of fact, and is in each particular instance whether, in view of all the facts surrounding that individual instance, the circumstances and conditions are so dissimilar as to justify the greater charge for the shorter distance; and in deciding this question the interests of all parties, the carrier as well as the public, must be considered. Citing *Interstate Commerce Commission v. Alabama Midland Railway Company*, 168 U. S., 144; 42 L. ed., 414; 18 Sup. Ct. Rep., 45.

1042. The fact that one competing carrier has the long line does not create a dissimilarity in circumstances and conditions which justifies it in disregarding the rule of the fourth section, while competing short lines are bound by that rule. To permit the carrier by the long line to meet lower competitive rates at a more distant point without making as low rates from intermediate stations, while its competitors are obliged in all cases to make no higher charge from intermediate points on their lines, would place those competitors at the mercy of such long-line carrier. When a carrier comes into the field of competition, whether it be as the long line or as the short line, it comes subject to the same limitation as every other competitor.

1043. To allow one carrier to meet the rates of its competitors until it is found to have done something more than meet such rates does not constitute a workable basis, for the causes which lead to rate fluctuations are so intangible, often resting upon mere suspicion, that any attempt to determine in an individual case what those causes were would ordinarily be futile, and to enforce such a rule would stifle that competition which the act to regulate commerce was intended to secure.

1044. Lower rates are in effect by the defendant and other lines on flour and other traffic from St. Paul, Minneapolis, Anoka, Elk River, Princeton, and Milaca, Minn., than from St. Cloud, Minn., to eastern points; and on coal and other westbound freight the rates from eastern points are higher to St. Cloud than to the other points specified. The disparity in rates against St. Cloud greatly prejudices that city, millers, merchants, and consumers in that locality, and producers of grain in the section surrounding St. Cloud in comparison with the other places mentioned and competing millers and dealers therein. The defendant competes over a long line with three other rail lines between Duluth and other Lake Superior points and St. Paul and Minneapolis for traffic to and from the East, and St. Cloud is an intermediate point on its line; but it carries only an insignificant amount of such competitive traffic. In entering upon such competition it accepted the rates of its competitors, but being engaged in the traffic it is able to control the through rate equally with the other competing lines, and of all these lines only the defendant makes a higher charge to or from any intermediate point. *Held*, upon consideration of the whole situation, that defendant carries this business from and to St. Paul, Minneapolis,

Anoka, and Elk River "under substantially similar circumstances and conditions" with those existing in case of business to and from St. Cloud, and that the higher rates to and from St. Cloud, the intermediate point, are in violation of the fourth section.

1045. Allowing railway competition, such as is shown in this case, to constitute an exception to the rule of the fourth section would permit throughout the whole country the making of higher rates to or from intermediate points, thereby disarranging business conditions and producing endless discriminations which do not now exist. Such application of the long and short haul clause was not intended by the act, and it should not be permitted in due consideration of the interests of all parties concerned.
1046. A rate can seldom be considered "in and of itself." It must be taken almost invariably in relation to and in connection with other rates, for the freight rates of this country, both upon different commodities and between different localities, are largely interdependent, and it is because they do not bear a proper relation to one another, rather than that they are absolutely either too low or too high, which most often gives occasion for complaint.

D. K. Spillers & Co. v. Louisville and Nashville Railroad Company. (8 I. C. C. Rep., 364.)

1047. Defendant instructed its agents to disregard the regular published tariff rates to Gallatin, and to charge the lower combination of rates to and from Nashville. It also had this rule of applying combination rates when less than tariff rates were in force at other stations on its line. Instructions to that effect were issued in a separate printed circular, and did not appear, nor were they referred to in any way, upon its regular published tariffs. *Held*, That this practice is unlawful, and that, to be in compliance with the act, any rule which operates to alter, modify, or change established rates must be fully and clearly set forth upon the published tariffs of rates and charges to be affected thereby.

Trades League of Philadelphia v. Philadelphia, Wilmington and Baltimore Railroad Company; New York, Philadelphia and Norfolk Railroad Company; Norfolk and Western Railway Company, and Southern Railway Company. (8 I. C. C. Rep., 368.)

1048. Iron-pipe fittings shipped in cases from northern points to southern territory take second-class rates, but if shipped in casks, barrels, or kegs a special iron rate, lower than the sixth-class rate, is applied on any quantity. The barrel package is cheaper than the case, except when the quantity is insufficient to fill a barrel; but when that happens a keg can be used for packing, with but little inconvenience or additional expense, and the lower special iron rate is thereby secured. The choice is wholly with the shipper to pay the higher rate on fittings in cases or the lower rate on fittings in kegs or barrels. Such a classification does not operate of itself to aid dishonest shippers in underbilling goods of greater value, and the opportunity for false billing would not be lessened by giving the special iron rate to pipe fittings packed in cases. No ground of distinction appears in this respect between pipe fittings and numerous other articles included in the special iron list and taking higher rates when packed in boxes, and reclassification of all these other commodities is not warranted by the facts in this case. *Held*, That the defendant carriers have not exceeded the limits of their discretion in placing iron-pipe fittings packed in cases in a higher class than iron-pipe fittings packed in kegs or barrels, and that such action is not unreasonable or otherwise in violation of the act to regulate commerce.

In the matter of the application of certain railroad companies for a further extension of time within which to comply with the provisions of the safety-appliance act. (8 I. C. C. Rep., —)

1049. The petitioning carriers, and all other common carriers engaged in interstate commerce by railroad, granted a further extension of seven months from January 1, 1900, within which to comply with the provisions of sections 1 and 2 of the safety-appliance act of March 2, 1893.
- Savannah Bureau of Freight and Transportation; O'Brien & Carter; Coleman & McColskey; Bullock Bros.; O. L. Williams; Robert Melton & Co.; E. M. Godwin; Coleman & Hayes Bros.; White & Williams, and J. N. Daniel v. Louisville and Nashville Railroad Company; Florida Central and Peninsular Railroad Company; Savannah, Florida and Western Railway Company; Charleston and Savannah Railway Company; Alabama Midland Railway Company; Clyde Steamship Company; Ocean Steamship Company of Savannah, Ga. (8 I. C. C. Rep., 377.)

1050. Complainants alleged that defendants' rates on sugar and other commodities from New York to Chipley and other points in Florida were unlawful as compared with the rates for the greater distances to Pensacola, Mobile, and New Orleans, but the evidence was insufficient to warrant a conclusion.

1051. Rates charged over defendants' line on bacon and other commodities from Savannah, Ga., to stations in Florida on the Louisville and Nashville Railroad were not shown to be unlawful in comparison with rates on like traffic to those stations from New Orleans or Pensacola.
1052. Defendants' rate on uncompressed cotton from stations in Florida on the Louisville and Nashville Railroad to Savannah was \$2.75 per bale at the time of hearing, when complaint was filed, and for some years prior thereto, but subsequent to the hearing this rate was increased 55 cents—to \$3.30 per bale. The rates to Mobile and New Orleans were and still are, respectively, \$2 and \$2.50 per bale. *Held*, That the rate of \$2.75 per bale to Savannah was not unlawful, but that the whole advance of 55 cents was unlawful, and any higher rate on such cotton to Savannah than the former difference of 25 cents per bale above the rate in force from the same stations to New Orleans violates sections 1 and 3 of the statute.
1053. A carrier can not lawfully establish and maintain an adjustment of rates which in practice prevents shippers on its line from availing themselves of a principal market, which they have long been using, and confers a substantial monopoly upon a new market in which, for reasons of its own, it has greater interest.
1054. When a carrier makes rates to two competing markets which give the one a practical monopoly over the other because it can secure reshipments from the favored locality and none from the other, it goes beyond serving its fair interest and disregards the statutory requirement of relative equality as between persons, localities, and particular descriptions of traffic.
1055. If a railroad company can not secure other than an unreasonably low share of a joint rate to a seaport on another road, it may be justified in declining to join in such a rate, especially when it can take the traffic to a seaport reached by its own road; but a carrier engaged in transportation over the through line finds no such justification when it is able to secure for itself a share of the joint rate which fully equals the rate established by it for purely local service over like distances on its own road.
1056. The Louisville and Nashville Company makes certain local rates on rosin and turpentine from stations on its Pensacola and Atlantic division in Florida to Pensacola, Fla., and it joins with connecting carriers in making certain through group rates from the same stations to Savannah, Ga. For its service to the junction point the Louisville and Nashville exacts shares of the through joint rates to Savannah which greatly exceed its purely local rates for like distances to Pensacola, while the shares accepted by its connecting carriers are reasonably low. Upon consideration of all the facts and circumstances, *Held* (1), That the shares of the Louisville and Nashville Company in the through rates to Savannah are unreasonable and unjust and operate to make the entire through rates unlawful under sections 1 and 3 of the act in comparison with the rates to Pensacola. (2) That rates on rosin and turpentine from such Pensacola and Atlantic division stations to Savannah should be adjusted to the rates to Pensacola by adding to the local rates of the Louisville and Nashville Company for the distance to Pensacola which is nearest to the distance from each station to River Junction the present share accepted by the carriers to Savannah from River Junction; provided, however, that on shipments of turpentine to Savannah from stations east of Mossyhead the Louisville and Nashville Company should have more than its local rate for the like distance to Pensacola, and that such rate should be determined by adding a differential of 6 cents to the Louisville and Nashville rate from Sneads to Pensacola, the carriers east of River Junction accepting their present share from such stations east of Mossyhead.

City of Danville and others *v.* Southern Railway Company and others. (8 I. C. C. Rep., 409.)

1057. Under section 4 of the act the question for the Commission is one of fact, and the interests of the producing market, the consuming markets, and the carriers are to be considered in determining whether upon the whole situation there is such dissimilarity of circumstances and conditions as justifies the rates in question. *Louisville and N. R. Co. v. Behlmer*, 175 U. S., 648, cited and applied.
1058. One case can seldom be an exact precedent for another, for each traffic situation presents points of difference, and each complaint must be considered upon its own peculiar facts.
1059. The development of the Southern Railway into a great system, through consolidation and improvement of worthless properties, is a legitimate enterprise which has benefited the whole territory affected thereby; and while those who conceived and executed it have no right to exact a return upon an extravagant capitalization, whatever has honestly and in good

faith gone into the enterprise should be protected. But the people living in such territory are also entitled to protection, and the Southern Railway, by virtue of the fact that it has obtained possession of and now controls the avenues of communication by rail between the city of Danville and the outside world, has no right to deprive that community of the competitive advantages which the enterprise of its citizens in one way or another has secured, and upon the strength of which business conditions have grown up; it must recognize the geographical position and the commercial importance of the city of Danville.

1060. The system of rate-making into Southern territory, under which, on traffic from St. Louis, Chicago, and other points, the rates to Danville are the sums of locals to and from the Ohio River, and the rates to Lynchburg are made on a much lower joint-rate basis, is utterly unreasonable. No opinion is expressed as to the system as a general scheme, but if the carriers desire to make rates in that manner they must so adjust their charges as not to annihilate the city of Danville. Rates to Danville must be adjusted with relation to rates to competitive localities, like Lynchburg, and the carriers from the point of origin to destination should prorate in these rates if they participate in either Lynchburg or Danville business.
 1061. In determining the Danville rate from New Orleans and Western points of shipment, the Southern Railway, which dominates the situation, should, instead of adding to the rate to Lynchburg the local back from Lynchburg, recognize that the business is through business upon which Lynchburg, a competitor of Danville, enjoys a low through rate, and upon which Danville itself is entitled to a through rate.
 1062. Under all the circumstances and conditions, freight rates from Northern and Eastern cities, from Western points of shipment, and from New Orleans to Lynchburg, Va., may properly be somewhat lower than the rates to Danville, Va., but the present rates to Danville as compared with those in force to Lynchburg are excessive under the fourth as well as the third section of the act. The rates from Northern and Eastern cities to Danville and the rates from New Orleans to Danville on sugar, molasses, rice, and coffee should not exceed those to Lynchburg by more than 10 per cent. The rates between Danville and the West, including the rate on tobacco to Louisville, Ky., should not exceed those between Lynchburg and the West by more than 15 per cent.
 1063. Case held open and order suspended to await readjustment of rates by the Southern Railway and connecting carriers.
- Thomas F. Sprigg, Geo. B. Skinner, Sigmund Kann, Joseph A. Rohr, and Edw. M. Kennard, individually and as a committee representing commutation-ticket holders between Baltimore and Washington, *v.* Baltimore and Ohio Railroad Company, John K. Cowan, and Oscar G. Murray, receivers, and Baltimore and Potomac Railroad Company. (8 I. C. C. Rep., 443.)
1064. The action of the defendants in withdrawing the 180-trip quarterly ticket between Baltimore and Washington was within the limits of their discretion, and did not constitute a violation of the act to regulate commerce.
 1065. Under section 22 of the act, carriers are allowed to issue mileage, excursion, and commutation tickets, but ordinarily they can not be compelled to do so. To the extent necessary for their use, tickets of the description named are exempt from the general rules of the statute. Compliance with those rules may be directed by the Commission, but requiring exceptions thereto is not within its province; and this applies as well to the restoration of such tickets where they have been withdrawn, as to the refusal to furnish them where their introduction has been requested.
 1066. The provision in section 22, above referred to, authorizes special rates to commuters, which are less per mile than the charges to other passengers for longer distances. Such a relation of rates must exist at certain points under any system of commutation. The most remote point within a commutation district secures lower rates per mile than the next and more distant point without that district; but the discrimination thus created is not unjust, nor are places outside the commutation territory thereby subjected to undue prejudice.
 1067. The Commission has no authority to administer the antitrust law, or even to determine whether it has been violated. If an investigation discloses a violation of that law, the power of the Commission is not enlarged nor its duty changed in respect of the rate involved in the inquiry. No relief could be afforded the complainants in this proceeding upon the theory that the quarterly ticket was withdrawn under an agreement between the carriers in violation of the antitrust law, even if the facts were found in support of that contention.

A. J. Gustin *v.* Burlington and Missouri River Railroad in Nebraska; Union Pacific Railway Company and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R. Coudert, receivers thereof; Denver and Rio Grande Railroad Company, and Southern Pacific Company. (8 I. C. C. Rep., 481.)

1068. The competition of carriers by water from San Francisco to Gulf of Mexico and Atlantic seaports, and the competition of refineries on the Eastern seaboard with refineries on the Pacific coast, operate, in connection with transportation rates in effect from the East and South to Omaha, to render the circumstances and conditions governing the carriage of sugar by defendants from San Francisco to Omaha, Nebr., substantially dissimilar in comparison with those applying on the transportation for the shorter distance over the same line from San Francisco to Kearney, Nebr., and to justify a rate of 65 cents per 100 pounds to Kearney, while a rate of 50 cents per 100 pounds is in force to Omaha; but such circumstances and conditions do not justify the present rate of 77 cents per 100 pounds as compared with the rate of 50 cents in force to Omaha.

The Board of Trade of the City of Hampton, Florida, *v.* The Nashville, Chattanooga and St. Louis Railway Company, Western and Atlantic Railroad Company, The Central of Georgia Railway Company, and The Georgia Southern and Florida Railway Company. (8 I. C. C. Rep., 503.)

1069. The rates from St. Louis, Nashville, and Chattanooga to Hampton, complained of in this case, are combinations of the through rates for the haul through Hampton to Palatka and the local rates from Palatka back to Hampton. The result of this system of rate making is to enable the merchants at Palatka to compete with merchants at Hampton at their own doors on equal terms, while the latter are debarred from such competition with the former, and as to territory between the two localities, Palatka merchants are given such an advantage in rates as to enable them to undersell Hampton merchants. This system of rate making results in one of the principal evils which the act to regulate commerce was designed to remedy.

1070. While the location of Palatka on the St. Johns River, and the fact that there is more competition by rail at Palatka than at Hampton, may justify rates to Palatka somewhat lower than to Hampton, the Hampton rates should not be higher than the Palatka rates by the locals from Palatka to Hampton; and in fixing the Hampton rates the carriers are bound to take into account the interest of the community at Hampton as well as its own interest, and they must not put in rates to Hampton which prohibit its citizens from the transaction of business in competition with Palatka. *Held*, that the present Hampton rates are in violation of both the fourth and third sections of the act to regulate commerce, but that Hampton rates may properly be made higher than the Palatka rates by the differentials now existing between the Palatka and Jacksonville rates.

1071. The defendants are given until May 1, 1900, to readjust their rates to Hampton and Palatka in accordance with the conclusion above stated, and if at that date this has not been done, an order will issue in the premises.

Pennsylvania Millers' State Association *v.* The Philadelphia and Reading Railway Company *et al.* (8 I. C. C. Rep., 531.)

1072. It is well settled that a railway company whose road is wholly within the bounds of a single State, "when it voluntarily engages as a common carrier in interstate commerce by making an arrangement for a continuous carriage or shipment of goods and merchandise, is subjected, so far as such traffic is concerned, to the regulations and provisions of the act to regulate commerce." Interstate Commerce Commission *v.* Detroit, G. H. and M. R. Co., 167 U. S., 642; Cincinnati, N. O. and T. P. R. Co. *v.* Interstate Commerce Commission, 162 U. S., 184; The Daniel Ball, 10 Wall., 565.

1073. There is no violation of section 2 of the commerce law shown in this case in the application of the rule allowing 96 hours for unloading cars at Philadelphia; neither is there any violation of that section in the facts that on all other commodities beside those to which the 96-hour rule is applied, only 48 hours are allowed at Philadelphia, and on coal, coke, pig iron, and iron ore 72 hours are allowed at interior points, while only 48 hours are allowed on other traffic at interior points. Section 2 prohibits unjust discrimination in "the transportation of a like kind of traffic," and does not apply where the traffic is of different kinds or classes not competitive with each other.

1074. The rule of section 4 of the law, forbidding the greater charge for the shorter than the longer haul, has no application to this case. That rule is based

on distance and relates to the actual transportation charges and not to demurrage charges, which are in the nature of charges for storage in the cars of the carrier. (*Interstate Commerce Commission v. Detroit, C. H. and M. R. Co.*, 167 U. S., 644.) If, however, such demurrage charges when added to transportation rates result in greater aggregate charges in certain cases than in other cases involving longer hauls, this may constitute undue preference as between different localities under section 3.

1075. If the time allowed at Philadelphia, or other terminals, for loading or unloading is reasonable and that allowed at interior points is unreasonably small, then an undue prejudice to interior points in violation of section 3 of the law might result; and if demurrage charges are made to commence before the expiration of a reasonable time for loading or unloading, this may be a violation of the provision of section 1 of the law, which directs "that charges made for any service rendered or to be rendered in the transportation of passengers or property, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just."

1076. While it is held by the Supreme Court in *Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co.*, 167 U. S., 479, that the Commission has no power to prescribe rates, "maximum, minimum, or absolute," the Commission may order the carriers to "desist from the continuance of an unlawful practice." (*Interstate Commerce Commission v. East Tennessee, V. & G. R. Co.*, 85 Fed. Rep., 110.) The Commission may therefore after investigation find a particular rate to be unlawful and prohibit the exaction of that rate, or find the time allowed for loading or unloading unlawful, or, in other words, unreasonably small, and forbid the charging of demurrage at the expiration of that time and before the expiration of a reasonable time.

1077. It is held that forty-eight hours is an unreasonably small allowance of time for unloading where any portion of it has to be consumed in attending to the preliminaries necessarily antecedent to the actual process of unloading, and it is ordered that as to grain, flour, hay, and feed consigned to and deliverable at interior points in the territory of the Philadelphia Car Service Association, the defendants cease and desist from charging demurrage until the expiration of a reasonable time for unloading after the cars have been placed for unloading and notice of such placing has been given the consignee or other proper party. It is further held that forty-eight hours will be a reasonable time for the actual unloading.

1078. By section 1 of the law, storage is named as a "service in connection" with transportation, and the charges therefor are required to be "reasonable and just." The schedule of rates required by section 6 of the law to be printed, posted, and filed with the Commission should state, among other terminal charges, the rules and regulations, if any, of the carrier in relation to storage; and the Commission has so ordered.

Holmes & Co. v. Southern Railway Company; Memphis and Charleston Railroad Company and Chas. M. McGhee and Henry Pink, receivers thereof; Kansas City, Memphis and Birmingham Railroad Company; Kansas City, Fort Scott and Memphis Railroad Company; Missouri Pacific Railway Company, and Illinois Central Railroad Company. (8 I. C. C. Rep., 561.)

1079. A complainant is entitled to an order for reparation in an amount equal to that by which the rates exacted and paid exceed reasonable rates, but the burden of showing the unreasonableness and the amount is upon the complainant.

1080. The continuance of a given rate is not conclusive evidence of the reasonableness of that rate; but when a railway company advances a rate which has been for some time in force, the fact of its continuance is in the nature of an admission against that company which tends to show the unreasonableness of the advance; and the force of this admission becomes great in view of the general decline in the average of railway rates and the lessened cost of service.

1081. The action of a railway company in reducing a rate upon complaint of a shipper is not conclusive evidence that the rate was unreasonable before the reduction, but when the traffic manager of that company, after a careful examination of the facts, makes the reduction, that, too, is in the nature of an admission against the reasonableness of the obnoxious rate at the time of the reduction.

1082. A railway company may from considerations of policy grant a reduction in its rates which this Commission could not order as a matter of right under the act to regulate commerce.

1083. Rates on barrel material from the West to Hawkinsville, Ga., were higher than those to Macon, Ga., from February 10, 1896, to January 22, 1897. At times prior to the date first mentioned, and uniformly since the date last mentioned, the rates to Hawkinsville and Macon have been the same. Rates on other commodities are, as a rule, higher to Hawkinsville than to Macon. The distance is greater to Hawkinsville, which is located on a branch line, and competition is less active there than at Macon. *Held*, that complainant failed to show that the rate on barrel material under the act to regulate commerce ought from February 10, 1896, to January 22, 1897, to have been the same to Hawkinsville as to Macon, and that the complaint should be dismissed.

Holmes & Co. v. Southern Railway Company, Cincinnati, New Orleans and Texas Pacific Railway Company, Columbus, Hocking Valley and Toledo Railway Company, and Pennsylvania Railroad Company. (8 I. C. C. Rep., 570.)

1084. Upon the conclusions announced in the preceding case, Holmes & Co. v. Southern Railway Company *et al.*, the complaint in this case should be dismissed.

City of Danville and others v. Southern Railway Company and others. (8 I. C. C. Rep., 571.)

1085. A decision adverse to the defendants having been rendered in this proceeding, and an application for rehearing having been filed, such application was, after due hearing, denied.

In The Matter of Alleged Unlawful Charges for Transportation of Vegetables From Shipping Points in Florida to New York and Other Northeastern Points by The Savannah, Florida and Western Railway Company; The Brunswick and Western Railroad Company; The Charleston and Savannah Railway Company; The Silver Springs, Ocala and Gulf Railway Company; The Sanford and St. Petersburg Railroad Company; The Florida Southern Railway Company; The Florida Central and Peninsular Railroad Company; The Southern Railway Company; The Northeastern Railroad Company of South Carolina; The Norfolk and Carolina Railroad Company; The Wilmington, Columbia and Augusta Railroad Company; The Wilmington and Weldon Railroad Company; The Richmond and Petersburg Railroad Company; The Petersburg Railroad Company; The Richmond, Fredericksburg and Potomac Railroad Company; The New York, Philadelphia and Norfolk Railroad Company; The Pennsylvania Railroad Company; The New York, New Haven and Hartford Railroad Company; The New England Railroad Company; The Ocean Steamship Company of Savannah; The Clyde Steamship Company; The New York and Texas Steamship Company; The Old Dominion Steamship Company; The Merchants and Miners' Transportation Company, and the Baltimore, Chesapeake and Richmond Steamboat Company. (8 I. C. C. Rep., 585.)

1086. Allegations of unreasonable rates on vegetables from points in Florida to New York and other northeastern destinations were investigated by the Commission in a proceeding instituted upon its own motion, but the evidence presented was too uncertain and inconclusive to enable the Commission to make the necessary comparisons or arrive at any definite conclusion.

1087. Published tariffs specifying rates per standard crate on vegetables shipped from Florida to northern or northeastern points should state plainly the weight or dimensions of the crate to which the rates apply.

Warren-Ehret Company v. The Central Railroad of New Jersey, and The New York, New Haven and Hartford Railroad Company. (8 I. C. C. Rep., —.)

1088. While a railroad company operating its road as part of a through line in connection with other carriers defendants in a case brought to test the legality of a through charge over such line is a proper party, it is not a necessary party to the proceeding.

1089. Although a shipper or consignee has no direct interest in the way a joint rate is divided between the carriers, nor in the amount of the division received by each carrier, he is entitled, nevertheless, to inquire into such division when he complains that the joint rate is unlawful, for the amount received by the different carriers may be significant upon the reasonableness of the aggregate charge; and when an unlawful rate results from some arbitrary share or division exacted by one of the carriers, the Commission will find the facts and state its conclusions with respect to such share or division.

1090. The rate on roofing slag, carloads, from Leesport, Pa., to Harlem River Station, is \$3.40 per ton, of which the carriers to Communipaw, N. J., on the Hudson River, receive \$1.30 per ton, the balance, amounting to \$2.10

per ton, going to the N. Y., N. H. & H. R. Co. for its service in carrying the slag by its car floats from Communipaw around New York City to its Harlem River Station. Such through rate also applies as a group rate to numerous stations on the N. Y., N. H. & H. R. in what is known as the Hartford group, including Waterbury, Conn. The freight could be transferred by an independent lighterage company from Communipaw to Harlem for 80 cents per ton, and railroads terminating on the New Jersey shore generally allow 60 cents per ton for lighterage to points within New York lighterage limits. *Held*, upon all the facts, that the through rate of \$3.40 to Harlem River is grossly unreasonable, and is rendered so by the excessive share of \$2.10 to the N. Y., N. H. & H. R. Co. for transfer by its car floats from Communipaw to Harlem River; that reasonable compensation for such delivery by car float should not exceed \$1 per ton, and this added to the share of \$1.30 received by the connecting carriers constitutes a reasonable and lawful rate of \$2.30 per ton, which the defendant carriers are recommended to put in force; that the complainant is entitled to reparation on a shipment of two carloads of slag to the extent of the difference between the rate charged and the rate found reasonable. The propriety of the \$3.40 rate per ton applied as a group rate to all stations in the Hartford group is not passed upon in this proceeding.

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829.

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(See Rates, Unreasonably Low.)

REASONABLE RATES.

73, 74, 75, 80, 83, 84, 107, 108, 109, 110, 111, 112, 113, 125, 126, 127, 128, 129, 130, 159, 160, 180, 181, 182, 185, 186, 187, 188, 189, 190, 194, 195, 196, 197, 198, 200, 207, 209, 212, 213, 214, 215, 216, 217, 221, 222, 223, 231, 232, 234, 241, 242, 243, 244, 246, 247, 248, 249, 250, 251, 252, 253, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 281, 283, 285, 286, 287, 288, 289, 290, 304, 314, 316, 320, 321, 322, 323, 324, 327, 328, 332, 333, 334, 335, 336, 337, 353, 354, 355, 378, 391, 392, 393, 394, 395, 396, 398, 399, 400, 401, 402, 403, 404, 405, 416, 417, 423, 424, 425, 426, 429, 433, 434, 435, 436, 437, 438, 458, 460, 462, 463, 464, 467, 468, 469, 470, 471, 472, 473, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 541, 542, 543, 545, 553, 554, 555, 559, 560, 561, 562, 563, 567, 568, 569, 570, 575, 576, 581, 582, 583, 584, 599, 600, 604, 605, 606, 607, 608, 617, 618, 619, 620, 621, 622, 623, 626, 627, 628, 631, 632, 633, 638, 642, 643, 644, 651, 652, 653, 654, 655, 656, 657, 660, 662, 663, 664, 665, 666, 667, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 681, 682, 683, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 702, 703, 704, 705, 706, 707, 708, 709, 710, 712, 716, 720, 723, 726, 737, 738, 741, 745, 746, 747, 748, 751, 758, 761, 781, 784, 785, 788, 790, 792, 793, 798, 811, 812, 831, 832, 833, 837, 842, 845, 846, 849, 859, 864, 865, 866, 868, 873, 874, 880, 881, 882, 883, 888, 891, 892, 905, 915, 916, 917, 918, 919, 920, 924, 925, 929, 930, 931, 934, 935, 938, 940, 947, 948, 949, 957, 959, 965, 971, 972, 973, 975, 976, 978, 982, 990, 995, 996, 997, 999, 1000, 1002, 1003, 1009, 1014, 1016, 1017, 1019, 1020, 1021, 1025, 1026, 1029, 1030, 1031, 1033, 1034, 1035, 1046, 1048, 1050, 1051, 1052, 1053, 1054, 1056, 1057, 1060, 1061, 1062, 1068, 1075, 1078, 1079, 1080, 1081, 1082, 1083, 1086, 1089, 1090.

REBATES.

(See Preference or Advantage.)

363, 364, 427, 428, 429, 452, 453, 454, 455, 589, 609, 610, 611, 673, 674, 675, 722, 870.

RECEIVERS.

95, 658, 686, 717, 801, 830.

REFRIGERATOR CARS.

784, 785.

REHEARING.

(See Practice.)

RELATIVE RATES.

(See Reasonable Rates.)

73, 81, 112, 121, 122, 143, 159, 160, 255, 261, 262, 281, 289, 305, 312, 327, 333, 392, 394, 405, 420, 421, 422, 423, 424, 425, 426, 439, 440, 441, 467, 470, 474, 475, 487, 488, 489, 491, 492, 506, 507, 508, 509, 510, 511, 538, 539, 546, 547, 548, 568, 582, 583, 586, 587, 588, 593, 594, 607, 608, 636, 651, 652, 653, 655, 656, 659, 660, 671, 673, 674, 675, 679, 685, 687, 698, 707, 708, 710, 711, 712, 731, 734, 812, 818, 819, 821, 837, 852, 881, 883, 928, 934, 940, 941, 947, 948, 972, 975, 976, 998, 999, 1002, 1014, 1027, 1028, 1029, 1031, 1046, 1066, 1068.

RELIEF FROM THE OPERATION OF THE FOURTH SECTION.

(See Long and Short Haul Section.)

1, 662, 699, 771, 773, 774, 775, 776, 779, 786, 787, 794, 797, 820, 841, 848, 870, 884, 913, 914, 923, 963, 964.

REPARATION.

(See Practice.)

90, 91, 140, 153, 366, 371, 378, 408, 463, 464, 532, 580, 606, 608, 616, 617, 618, 624, 625, 671, 672, 685, 686, 689, 690, 691, 699, 708, 728, 735, 790, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 833, 853, 867, 869, 876, 885, 908, 958, 1000, 1008, 1036, 1079, 1080, 1083, 1084, 1090.

REPLICATION.

(See Practice.)

76, 406.

RESHIPMENT OF FREIGHT.

(See Milling in Transit.)

5, 6, 7, 8, 9, 111, 112, 113, 114, 115, 116, 160, 315, 400, 401, 416, 417, 858, 899, 900, 962.

RETURN LOADS.

(See Cars; Long and Short Haul Section.)

402, 468, 732, 913, 974.

RIGHT OF WAY.

(See Preference or Advantage.)

ROUTING OF FREIGHT.

(See Through Routes and Through Rates.)

462, 463, 464, 746, 747, 748, 867, 894, 895, 896, 897, 898, 946, 966, 1037.

RULES OF PRACTICE.

(See Practice.)

SAFETY APPLIANCES.

829, 932, 1049.

SCHEDULES.

(See Tariffs.)

SECOND SECTION, CONSTRUCTION OF.

(*See Unjust Discrimination.*)

SEVENTEENTH SECTION, CONSTRUCTION OF.

(*See Interstate Commerce Commission; Practice.*)

SEVENTH SECTION, CONSTRUCTION OF.

(*See Connecting Lines; Continuous Carriage of Freights; Through Rates.*)

SHIPPERS.

(*See Preference or Advantage; Unjust Discrimination.*)

106, 141, 168, 265, 267, 268, 330, 352, 363, 463, 465, 474, 583, 713, 736, 739, 740, 746, 755, 757,
765, 830, 960.

SIXTEENTH SECTION, CONSTRUCTION OF.

(*See Fourteenth, Fifteenth, and Sixteenth Sections, Construction of.*)

SIXTH SECTION, CONSTRUCTION OF.

(*See Export Rates; Import Rates; Interstate Commerce Commission; Joint Rates; Jurisdiction; Notice; Tariffs.*)

SOAP RATES.

474, 475, 493, 552, 593, 594.

SOLDIERS AND SAILORS.

14.

SPECIAL RATES.

(*See Rebates.*)

209, 320, 458, 553, 559, 560, 743, 960, 961, 962, 1065, 1066.

SPECIAL EXCURSION RATES.

(*See Tickets; Special Rates.*)

SPECIAL TRAIN SERVICE.

(*See Facilities of Traffic.*)

504, 505, 506, 571, 575, 576, 581, 582, 583, 584, 599, 605, 606, 623, 624, 689, 699, 709, 710, 712,
716, 917.

STATE RAILROAD COMMISSIONS.

(*See Practice.*)

398, 399, 666, 850, 943, 965, 972.

STATE RAILROADS.

(*See Interstate Commerce; Facilities of Traffic; Long and Short Haul Section; Connecting Lines; Through and Local Rates.*)

450, 451, 601, 666, 695.

STEAMBOAT LINES.

(*See Competition; Through Routes and Through Rates; Water and Rail Lines.*)

STOCK CARS.

(See Cars.)

STOPPAGE IN TRANSIT.

(See Milling in Transit; Reshipment of Freight.)

STORAGE OF FREIGHT.

960, 961, 962, 1074, 1075, 1078.

STRAWBERRY RATES.

623, 625, 780, 781, 782, 783, 784, 785.

STREET RAILWAYS.

871, 873, 874.

SUBPŒNAS DUCES TECUM.

(See Practice; Books, Papers, and Documents.)

379, 380, 381, 382, 383, 384, 385, 386.

TANK CARS.

(See Cars; Unjust Discrimination.)

TANK STATIONS.

(See Oil Rates)

TARIFFS.

(See Notice; Practice.)

78, 141, 157, 158, 171, 173, 230, 239, 265, 291, 296, 337, 345, 347, 353, 354, 356, 360, 361, 363, 364, 374, 376, 377, 407, 408, 418, 419, 448, 451, 452, 453, 454, 455, 458, 459, 460, 461, 465, 473, 478, 485, 494, 495, 496, 517, 520, 557, 568, 573, 577, 578, 579, 589, 602, 603, 607, 673, 675, 724, 772, 828, 843, 844, 860, 861, 863, 892, 893, 894, 896, 897, 898, 906, 907, 908, 909, 910, 915, 924, 961, 962, 988, 992, 1004, 1015, 1016, 1036, 1047, 1078, 1087.

TERMINAL CHARGES, EXPENSES, AND STATIONS.

(See Facilities of Traffic.)

374, 394, 538, 539, 579, 617, 883, 950, 952, 953, 954, 955, 957, 999, 960, 961, 962, 1032, 1033, 1072, 1073, 1074, 1075, 1076, 1077, 1078.

THIRD PARTIES.

(See Practice.)

545, 869.

THIRD SECTION, CONSTRUCTION OF.

(See Preference or Advantage; Through Routes and Through Rates; Facilities of Traffic; Relative Rates; Unjust Discrimination.)

THIRTEENTH SECTION, CONSTRUCTION OF.

(See Complaint; Interstate Commerce Commission.)

THROUGH AND LOCAL RATES.

(See Reasonable Rates; Long and Short Haul Section; Preference or Advantage; Through Routes and Through Rates; Through Rates; Local Rates; Mileage Rates.)

15, 184, 196, 306, 323, 324, 346, 391, 416, 417, 467, 509, 517, 526, 530, 531, 532, 564, 565, 567, 577, 578, 595, 596, 597, 598, 695, 797, 798, 849, 939, 965, 992, 1040, 1060, 1061, 1069, 1070.

THROUGH BILLS OF LADING.

(See Bills of Lading.)

THROUGH LINES.

(See Through Rates; Connecting Lines; Continuous Carriage of Freights; Through Routes and Through Rates.)

THROUGH RATES.

(See Mileage Rates; Reasonable Rates; Through and Local Rates; Through Routes and Through Rates.)

75, 89, 128, 184, 185, 196, 213, 214, 215, 216, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 323, 324, 346, 391, 416, 456, 457, 509, 526, 528, 529, 530, 531, 532, 571, 599, 604, 607, 608, 619, 636, 660, 695, 706, 716, 718, 721, 746, 747, 748, 749, 797, 802, 810, 811, 813, 822, 849, 856, 858, 867, 868, 874, 893, 894, 895, 896, 897, 898, 899, 915, 921, 924, 939, 952, 965, 988, 992, 1002, 1006, 1016, 1017, 1018, 1024, 1034, 1035, 1040, 1060, 1061, 1069, 1070, 1088, 1089, 1090.

THROUGH ROUTES AND THROUGH RATES.

(See Through Rates.)

350, 351, 448, 449, 450, 451, 462, 463, 464, 526, 528, 530, 531, 532, 564, 590, 591, 592, 736, 746, 797, 802, 825, 856, 858, 867, 868, 924, 966, 1017, 1024, 1034, 1035, 1060, 1061.

THROUGH SHIPMENTS.

(See Through and Local Rates; Continuous Carriage of Freights; Connecting Lines.)

TICKET BROKERAGE.

(See Tickets.)

43, 295, 297, 298.

TICKETS.

(See Passengers.)

25, 26, 27, 28, 29, 43, 51, 52, 53, 69, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 345, 346, 347, 348, 349, 350, 351, 378, 418, 419, 427, 428, 429, 743, 775, 776, 873, 874, 1064, 1065, 1066, 1067.

TRADE CENTERS.

(See Long and Short Haul Section; Unjust Discrimination; Preference or Advantage.)

TRAFFIC.

(See Interstate Commerce; Preference or Advantage.)

TRAIN LOADS.

892.

TRANSPORTATION SUBJECT TO THE ACT.

(See Through Routes and Through Rates; Reasonable Rates; Relative Rates; Preference or Advantage; Long and Short Haul Section; Unjust Discrimination; Classification; Free Passes and Free Transportation.)

TWELFTH SECTION, CONSTRUCTION OF.

(See Books, Papers, and Documents; Evidence; Interstate Commerce Commission; Notice; Practice.)

TWENTY-FIRST AND TWENTY-SECOND SECTIONS, CONSTRUCTION OF.

(See Free Passes and Free Transportation; Interstate Commerce Commission; Passengers; Practice; Tariffs; Tickets.)

UNDERBILLING.

162, 163, 164, 165, 166, 167, 168, 169, 170, 755, 1048.

UNDUE PREFERENCE.

(See Preference or Advantage.)

UNIFORM CLASSIFICATION.

(See Classification.)

UNITED STATES COURTS.

(See Practice.)

485, 486, 717, 735, 738, 830, 956.

UNITED STATES SENATE.

(See Hearings.)

476, 483, 485.

UNJUST DISCRIMINATION.

5, 6, 7, 8, 9, 12, 13, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 47, 51, 52, 53, 63, 64, 69, 70, 73, 74, 75, 80, 81, 82, 85, 86, 87, 88, 103, 104, 105, 106, 116, 117, 118, 119, 120, 121, 122, 123, 124, 137, 138, 139, 141, 142, 143, 144, 145, 149, 150, 151, 152, 153, 154, 155, 156, 159, 160, 173, 179, 180, 191, 201, 202, 203, 204, 205, 206, 253, 259, 268, 271, 276, 278, 279, 288, 290, 295, 297, 324, 329, 330, 332, 333, 334, 349, 353, 354, 355, 364, 367, 368, 369, 374, 375, 377, 412, 418, 419, 426, 427, 428, 432, 435, 450, 452, 453, 454, 455, 458, 459, 467, 469, 470, 473, 475, 488, 497, 498, 499, 500, 501, 502, 504, 505, 506, 528, 529, 532, 538, 539, 545, 546, 548, 550, 555, 556, 558, 562, 566, 577, 578, 589, 590, 593, 594, 608, 610, 611, 612, 613, 615, 630, 636, 637, 639, 640, 641, 642, 643, 644, 648, 649, 661, 662, 668, 669, 670, 674, 676, 677, 678, 683, 710, 711, 712, 713, 714, 716, 722, 723, 726, 728, 730, 733, 739, 743, 762, 767, 777, 778, 781, 788, 790, 796, 799, 802, 804, 808, 827, 837, 847, 851, 853, 858, 860, 861, 865, 867, 873, 880, 881, 882, 883, 886, 889, 891, 892, 901, 905, 912, 915, 917, 919, 924, 925, 928, 929, 930, 931, 942, 948, 953, 954, 955, 980, 982, 990, 992, 1011, 1014, 1029, 1039, 1062, 1064, 1065, 1066, 1069, 1070, 1073, 1085.

VALUE.

(See Classification.)

83, 403, 465, 687, 792, 838, 839, 995, 1029.

VEGETABLE RATES.

(See Perishable Freight.)

VOLUME OF TRAFFIC.

(See Carload Rates; Classification.)

34, 103, 122, 466, 605, 690, 731, 892.

WATER AND PIPE LINES.

(See Oil Rates.)

WATER AND RAIL LINES.

(*See Competition; Circumstances and Conditions.*)

400, 456, 457, 516, 517, 528, 529, 530, 531, 532, 543, 590, 591, 602, 605, 661, 662, 663, 664, 665
666, 692, 693, 841, 902, 943, 973, 1040, 1068.

WATER COMPETITION.

(*See Long and Short Haul Section; Circumstances and Conditions; Preference or Advantage; Competition.*)

85, 86, 87, 188, 190, 191, 239, 264, 400, 412, 438, 439, 468, 469, 473, 494, 495, 496, 509, 510, 511,
522, 523, 524, 526, 581, 582, 583, 584, 595, 596, 597, 598, 620, 643, 644, 646, 647, 648, 649, 651,
652, 653, 656, 657, 673, 674, 675, 676, 677, 679, 692, 703, 707, 762, 823, 826, 841, 902, 922, 943,
944, 973, 993, 1014, 1040, 1068.

WEIGHT.

(*See Carload Rates; Classification; Reasonable Rates.*)

395, 397, 409, 493, 684, 727, 838, 911, 912, 1087.

WHEAT AND WHEAT FLOUR.

(*See Grain Rates.*)

WHOLESALE RATES.

(*See Circumstances and Conditions; Carload Rates; Classification.*)

33, 35, 36, 44, 46, 47, 48, 348, 349, 418, 419, 892.

WITNESSES.

(*See Evidence; Practice; Subpœnas Duces Tecum.*)

WORLD'S FAIR RATES.

(*See Passengers.*)

YARDAGE CHARGES.

(*See Preference or Advantage; Terminal Charges.*)

APPENDIX C.

A. FORMAL PROCEEDINGS INSTITUTED BEFORE THE
COMMISSION DURING THE YEAR.

B. INFORMAL COMPLAINTS FILED WITH THE
COMMISSION DURING THE YEAR.

**FORMAL PROCEEDINGS INSTITUTED BEFORE THE COMMISSION
DURING THE YEAR.**

570. A. W. Holdzkom against Michigan Central Railroad Company and others.
Complaint alleges violation of sections 1, 2, 3, and 4 of the act, in the transportation of buggies, carriages, and other commodities from Jackson, Mich., and Chicago, Ill., to San Bernardino, Cal., as compared with those to Los Angeles, Cal.
January 22, 1900. Complaint filed.
February 12, 1900. Answer and statement in lieu of answer filed.
March 23, 1900. Case under advisement.
571. Granite Manufacturers' Association of New England against Central Vermont Railway Company and others.
Complaint alleges violation of sections 1, 2, and 3 of the act in the transportation of marble and granite blocks, slabs, tombstones, and monuments, such articles having been raised by official classification from fourth to third class, with valuation restricted to 40 cents per cubic foot.
February 6, 1900. Complaint filed.
February 17 to March 8, 1900. Answers filed.
November 30, 1900. Case having been settled, order of discontinuance was entered.
572. Spencer E. Carr against Northern Pacific Railway Company.
Complaint alleges violation of sections 1, 2, and 3 of the act, in refusing to transport complainant's private car from St. Paul, Minn., to Portland, Oreg.
February 23, 1900. Complaint filed.
March 16, 1900. Answer filed.
September 1, 1900. Deposition filed.
November 19, 1900. Hearing of argument.
November 28 to December 13, 1900. Briefs filed.
December 29, 1900. Case under advisement.
573. Proctor & Gamble Co. against Cincinnati, Hamilton and Dayton Railway Company and others.
Complaint alleges violation of sections 1, 2, and 3 of the act, in the transportation of common soap in carload and less than carload lots.
February 24, 1900. Complaint filed.
March 14 to April 4, 1900. Answers filed.
April 16 to August 23, 1900. Depositions filed.
June 16, 1900. Hearing postponed to June 20, 1900.
June 20-29, 1900. Hearing.
July 19, 1900. Hearing.
August 6-8, 1900. Hearing.
September 27, 28, 1900. Hearing.
November 12, 1900. Hearing of argument postponed to a date to be hereafter agreed upon, at the request of counsel for defendants.
574. William F. Warren & Co. against Gulf, Colorado and Santa Fe Railway Company.
Complaint alleges violation of sections 1, 2, and 3 of the act, in rate from Berwyn to Galveston as compared with rates from Ardmore to Galveston.
February 24, 1900. Complaint filed.
April 9, 1900. Answer filed.
June 2, 1900. Hearing.
September 23, 1900. Case having been settled, order of discontinuance was entered.
575. Consolidated Forwarding Company against Southern Pacific Company and others.
Complaint alleges violation of sections 1, 2, 3, and 5 of the act, in the transportation of oranges, lemons, and other fruit, also vegetables, grown in southern California to the eastern markets.
March 3, 1900. Complaint filed.
March 3, 1900. Order as to filing answers and assigning case for hearing, entered.
March 29, 1900. Answers filed.

575. Consolidated Forwarding Company against Southern Pacific Company and others—Continued.
 March 29, 1900. Motion to strike out part of complaint filed by defendant Southern California Railway Company.
 March 29, 1900. Intervening petitions of Continental Fruit Exchange and Armour & Co. filed.
 March 30, 31, 1900. Hearing.
 May 7 to June 9, 1900. Depositions filed.
 June 7, 8, 1900. Hearing of argument.
 September 29 to November 20, 1900. Briefs filed.
 December 29, 1900. Case under advisement.
576. Southern California Fruit Exchange against Southern California Railway Company.
 Complaint same as No. 575.
 Extracts from docket same as No. 575.
577. Charles G. Blake & Co. against Central Vermont Railway Company and others.
 Complaint alleges violation of sections 1, 2, and 3 of the act, in the transportation of marble and granite blocks, slabs, tombstones, and monuments, such articles having been raised by official classification No. 20 from fourth to third class with valuation restricted to 40 cents per cubic foot.
 March 5, 1900. Complaint filed.
 March 16, 1900. Answer of Fitchburg Railroad Company filed.
 March 19, 1900. Complaint withdrawn by the petitioner and case discontinued.
578. Birmingham Freight and Transportation Bureau against Central of Georgia Railway Company and others.
 Complaint alleges violation of sections 1, 2, 3, and 4 of the act, in that freight rates from Boston, Providence, New York, Philadelphia, and Baltimore are higher to Birmingham than to Memphis.
 April 23, 1900. Complaint filed.
 May 12 to 15, 1900. Answers filed.
 October 17, 1900. Case assigned for hearing at Birmingham, October 31, 1900.
 October 31, 1900. Hearing called. No appearance by complainant.
579. Mayor and council of Tifton against Louisville and Nashville Railroad Company and others.
 Complaint alleges violation of sections 1, 2, and 3 of the act, in that freight rates from New York, Cincinnati, Louisville, Evansville, Nashville, and New Orleans to Tifton are higher than to Albany, Cordele, Americus, Dawson, Macon, Brunswick, and Valdosta.
 May 17, 1900. Complaint filed.
 June 4 to 14, 1900. Answers filed.
 October 29, 1900. Hearing.
 December 29, 1900. Case under advisement.
580. George R. Campbell against Chicago and Northwestern Railway Company.
 Complaint alleges violation of sections 1, 2, 3, and 6 of the act, in the transportation of nine pieces of dressed granite from Chester, Mass., to Bassetts, Wis.
 June 11, 1900. Complaint filed.
 July 7, 1900. Notice having been filed that the claim had been satisfied the complaint was dismissed.
581. Spillers Produce Company against Louisville and Nashville Railroad Company and others.
 Complaint alleges violation of section 4 of the act, in the transportation of poultry and eggs from Gallatin, Tenn., to New York.
 July 6, 1900. Complaint filed.
 July 19 to August 8, 1900. Answers filed.
582. Charles G. Freeman against Grand Rapids and Indiana Railway Company and others.
 Complaint alleges violation of sections 1 and 6 of the act, in the transportation of potatoes from Gilbert, Mich., to Orange, N. J.
 September 22, 1900. Complaint filed.
 November 15, 1900. Answers filed.
 November 19, 20, 1900. Hearing.
583. Charles G. Freeman against Grand Rapids and Indiana Railway Company and others.
 Complaint alleges violation of sections 2 and 3 of the act, in the transportation of potatoes from Hobart, Mich., to Jacksonville, Fla.
 September 22, 1900. Complaint filed.
 November 19, 20, 1900. Hearing. Further hearing to be had.

584. Charles G. Freeman against Grand Rapids and Indiana Railway Company and others.
Complaint alleges violation of sections 1 and 6 of the act, in the transportation of potatoes from Hobart, Mich., to Orange, N. J.
September 22, 1900. Complaint filed.
November 19, 20, 1900. Hearing.
585. Charles G. Freeman against Grand Rapids and Indiana Railway Company and others.
Complaint alleges violation of sections 1, 2, 3, and 6 of the act, in transportation of potatoes from Hobart, Mich., to Dayton, Ohio.
September 22, 1900. Complaint filed.
November 19, 20, 1900. Hearing.
586. Charles G. Freeman against Grand Trunk Railway Company and others.
Complaint alleges damage in transit of shipment of beans to Sheridan, Ind., and that a shipment of produce to Macon, Ga., was diverted by carriers and failed to reach destination.
September 22, 1900. Complaint filed.
November 15, 1900. Answer of Detroit, Grand Haven and Milwaukee Railway filed.
November 19, 20, 1900. Hearing.
587. In the Matter of Underbilling and Misrepresentation of Freight.
October 29, 1900. Order of investigation entered.
November 14, 1900. Hearing.
November 22, 1900. Hearing.
December 21, 1900. Hearing.
588. In the Matter of Rates, Facilities, and Practices Applied in the Transportation, Handling, and Storage of Grain Carried from Western Points to Atlantic Seaboard and other Eastern Destinations.
November 9, 1900. Order of investigation entered.
November 14, 15, 1900. Hearing.
November 15, 1900. Memorandum of agreement between New York Central and Hudson River Railroad Company and the Western Elevating Company filed.
December 3, 1900. Hearing.
589. Red Cloud Mining Company against Southern Pacific Company.
Complaint alleges violation of sections 1 and 6 of the act, in the transportation of one carload of machinery from Erie, Pa., to Salton, Cal.
November 27, 1900. Complaint filed.
590. Edward G. Davies against Illinois Central Railroad Company.
Complaint alleges violation of sections 1, 2, 3, and 6 of the act, in the transportation of fruits and vegetables from points in Louisiana, Mississippi, Tennessee, and Kentucky to Chicago, Ill.
December 11, 1900. Complaint filed.

INFORMAL COMPLAINTS FILED DURING THE YEAR.

1043. Refusal of defendants to receive shipments of iron consigned to Lebanon, Pa.
1044. Excessive rate on hickory wood from Millers Falls and Worcester, Mass., to Boston and Somerville, Mass.
1045. Excessive rate on shingles from points in Washington to Delmont and Armour, S. Dak.
1046. Refusal of defendants to receive shipments of iron consigned to Lebanon, Pa.
1047. Overcharge on shipment of household goods from Montgomery, Ala., to Cleveland, Ohio.
1048. Discrimination against Berwyn, Ind. T., and in favor of Ardmore in rates on grain to Galveston, Tex., for export.
1049. Overcharge on shipment of coal from East St. Louis, Ill., to Omaha, Nebr.
1050. Discriminating rates on lumber from Decatur, Ala., to Benton Harbor, Mich., as compared with rates from Cullman, Ala.
1051. Excessive charge on shipment of household goods from Greensboro, N. C., to Louisville, Ky.
1052. Overcharge on lumber shipments from Donaldsonville, Ga., to Mount Vernon, Ill.
1053. Excessive rates on grain from Louisville, Ky., to Gallatin, Tenn.
1054. Excessive rates on sugar from La Fourche, La., to Galveston, Tex.
1055. Discriminating rates on cement from Bay Ridge, Ohio, to East St. Louis, Ill., in favor of Harper, Ohio.
1056. Discrimination in rates on tie timber from local points in Michigan.
1057. Excessive rates on milk from South Bethlehem, Pa., and intermediate points to New York, N. Y.
1058. Overcharge on corn from Rossville, Kans., to Gilmore, Ark.
1059. Discriminating rates on cotton from Sumter, S. C., to Charleston, S. C., giving same rate to loose as to compress cotton.
1060. Delay in delivery of goods shipped from Paterson, N. J., to Jacksonville, Fla.
1061. Excessive rates on eggs and dressed poultry from Gallatin, Tenn., to New York, N. Y.
1062. Overcharge on buggies from Cincinnati, Ohio, to Mitchellville, Tenn.
1063. Excessive rates on lumber from points on the Louisville, Evansville and St. Louis Consolidated Railroad Company to Philadelphia, Pa.
1064. Overcharge on carload of machinery from Chattanooga, Tenn., to Richburg, Miss.
1065. Discriminating rates on flour from Washington C. H., Ohio, to Wilmington, N. C., as compared with rates from Circleville and Columbus, Ohio.
- 1066A. 1066B. 1066C. Advance in rates on minimum carloads of cement from Eastern to Western points.
1067. Failure to redeem unused passenger ticket.
1068. Unjust demurrage charge on carload of lumber destined to New York City.
1069. Discriminating rates on crockery from Salem, Ohio, to Southern points.
1070. Discriminating rates on grain products for export from Milwaukee, Wis., to Eastern seaboard cities, as compared with rates on like shipments from Minneapolis, Minn.
1071. Refusal to furnish same facilities for the erection of an elevator and the handling of grain as are furnished to competitors.
1072. Excessive rates on lumber to intermediate points, as compared with rates from St. Louis, Mo., to El Paso, Tex.
1073. Discrimination in rates on lumber shipments to points in Oregon.
1074. Refusal to receive and send shipments from St. Louis, Mo., to Mosspoint, Miss., via a particular route.
1075. Lower rates from Chicago, Ill., to Philadelphia, Pa., than to intermediate points.
1076. Higher rates on ice from Sandusky, Ohio, an intermediate point, than from Hillsdale, Mich., to Cleveland, Ohio.

1077. Damage in transit to an organ shipped from Washington, D. C., to Highspire, Pa.
1078. Refusal by the Western Passenger Association to issue permit for reduced passenger rates to a clergyman.
1079. Discriminating rates on harness leather as compared to sole leather.
1080. Overcharge on granite from Chester, Mass., to Bassetts, Wis.
1081. Rates on flour from Medford to Alva, Okla., when passing through Kansas en route.
1082. Excessive charges on china closet from Chicago, and case of notions from Baltimore, Md., to Craig, Mo.
1083. Violation of law in form and manner of filing tariffs in matter of transcontinental rates.
1084. Wrongful classification of cotton drawers and overalls.
1085. Unreasonable switching charge at Kansas City, Mo., on shipment of bones.
1086. Discrimination in use of side track at Kensico, N. Y., on shipments of marble.
1087. Excessive rates on yellow-pine and hard-wood lumber from Southern points to Northern destinations.
1088. Rates on corn in carload lots from Doon, Iowa, and Yankton, S. Dak., to Seattle, Wash.
1089. Unjust and unequal classification of electrical apparatus and electrical goods.
1090. Unnecessary delay in delivery of shipments of lumber at Paterson, N. J.
1091. Discrimination in favor of Chicago and against St. Paul on shipments to Centuria, Grand Rapids, and Stevens Point, Wis.
1092. Withdrawal of carload rates on rosin from points in the Southern States to points North and West.
1093. Refusal to send carload shipments of fruit and other commodities from California to Eastern points by a particular route.
1094. Refusal to establish through routes and make joint through rates.
1095. Higher rate on dressed poultry when shipped in barrels than in packages of other description.
1096. Unjust classification of insulated copper wire in carload and less than carload lots in the Southern Classification.
1097. Excessive rates on lumber from Thirty-third street, New York City, to Morris Heights, N. Y., on through shipments.
1098. Unjust demurrage charges and delay in delivering shipments at Pekin, Ill.
1099. Discrimination in rates on timber shipments to Canisteo, N. Y., in favor of competitors.
1100. Denial of right to erect an elevator at Sheldon, Iowa.
1100. Rebates from published tariff rates.
1102. Refusal to redeem an expired mileage ticket.
1103. Protest against proposed change in the classification of granite.
1104. Temporary withdrawal of steamer *Belle Haven* from route between Washington, D. C., and Alexandria, Va., without due notice.
1105. Rates from St. Louis and Chicago to points in Oklahoma and Indian Territories.
1106. Failure to provide car for shipping machinery from Belleville, Ill., to Sauk Center, Minn.
1107. Concerning text books purchased for use in Kansas.
1108. Overcharge on shipment of feed from Kansas City to Port Jervis, N. Y.
1109. Protest against proposed change in Official Classification of sideboards, bookcases, etc.
1110. Unlawful advance in freight rates from New Orleans, La., to Brownsville, Tex.
1111. Unlawful advance in rates on granite.
1112. Discriminating rates on shipments of logs and lumber in favor of competitors.
1113. Discrimination against Burlington and in favor of Rutland, Vt., in freight rates from Pittsburg, Pa.
1114. Validity of freight rates changed in advance of filing and publishing tariff.
1115. Discriminating rates on flour against South Boston, Va., and in favor of Burkeville, Petersburg, and Norfolk, Va.
1116. Discriminating freight rates against Tifton, Ga., as compared with rates to Albany, Cordele, Americus, Dawson, and other Georgia points.
1117. Correction of error in tariff without legal notice.
1118. Advance in rates on lumber from Grants Pass, Oreg., to Pomona, Cal., without legal notice.
1119. Excessive rates on medical books by express company at Toledo, Ohio, and discrimination against a particular firm.
1120. Liability of shipper as well as carrier for concessions granted below tariff rates.
1121. Excessive rates on freight from Vicksburg, Miss., to Ruston, La., as compared with rates from New Orleans, La., to Ruston, La.

1122. Discrimination against Montgomery, Ala., in class rates from New York and Boston, in favor of Mobile, New Orleans, and other Southern points.
1123. Protest against changes in Official Classification.
1124. Delay in shipment of car of strawberries between Bridgeville, Del., and New York City.
1125. Higher rate on hay from Flat Rock, Ind., to Marietta, Ga., than for the longer distance to Atlanta, Ga.
1126. Diversion of car of potatoes shipped from Cadillac, Mich., to Augusta, Ga.
1127. Overcharge on a shipment of hickory wood from Hop River, Conn., to Somerville, Mass.
1128. Unreasonable charge of 25 cents per passenger for crossing a bridge.
1129. Protest against proposed change in Official Classification of granite.
1130. Unjust change in classification on rough and cut granite work from fourth to third class.
1131. Overcharge on a hogshead of earthenware from East Liverpool, Ohio, to Temple, Tex.
1132. Unjust classification of granite in less than carload lots.
1133. Higher rate on corn in carload lots from Cleveland, Ohio, to Syracuse, N. Y., than to New York City.
1134. Excessive rates on railroad ties from Petersburg, Va., to Philadelphia, Pa.
1135. Unreasonable freight rates to and from Woodward, Okla.
1136. Overcharge in cash fare from Richmond to Norfolk, Va.
1137. Unlawful charge on barbed wire from Worcester, Mass., to De Leon Springs, Fla.
1138. Protest against proposed change in the Official Classification of baled hay.
1139. Refusal to receive and send shipments of corn from Marietta, Kans., to Kansas City and Memphis via a particular route.
1140. Higher rates on hay from Mount Ayr to Chicago, Ill., than from Fair Oaks, Ind.
1141. Cancellation of class and commodity rates from Colorado common points to Pacific coast points.
1142. Overcharge on granite monuments shipped from Barre and St. Johnsbury, Vt., Fitzwilliam, N. H., and New York City to Clinton, Ill.
1143. Advance in rates on grain from points in Utah to the Pacific coast.
1144. Discrimination against certain cement mills as to the minimum capacity of cars in shipments of cement.
1145. Rate on scrap iron from Arlington, Ga., to Birmingham, Ala.
1146. Advance in rates on yellow-pine lumber for bedstead material between Dalton, Ga., and Cincinnati, Ohio.
1147. Discrimination in rates on fruit and vegetables from Louisiana, Mississippi, Tennessee, and Kentucky to Chicago, Ill., in favor of certain consignees, and higher rates than specified in published tariffs.
1148. Overcharge on carload freight and delay in refunding the same.
1149. Refusal to haul cotton from Espes, Ala., except on conditions prescribed by carrier.
1150. Unreasonable advance in freight rates on glue from Chicago, Ill., to Johnstown, N. Y.
1151. Unreasonable rate on ice from Sandusky, Ohio, to Cleveland, Ohio, as compared with the rate from Hillsdale, Mich., to Cleveland.
1152. Protest against proposed change in Official Classification in carload rates on hay.
1153. Protest against changes in Official Classification.
1154. Unlawful charge by express company on shipments from Biltmore, N. C., to Nebraska points.
1155. Group or blanket rates to New Rochelle, N. Y., and New York City.
1156. Refusal to receive freight from a steamship company for local stations unless charge is prepaid, and discrimination in favor of competing companies.
1157. Excessive charge on lumber shipments.
1158. Excessive rates on coal shipments.
1159. Discrimination in milling in transit privilege at Louisville, Ky.
1160. Discrimination in freight rates in favor of Brooklyn and New York City as against Jersey City.
1161. Overcharge on shipments of stone to Ipava, Ill.
1162. Unlawful overcharge on carloads of freight at Woodward, Okla.
1163. Protest against proposed change in Official Classification.
1164. Higher rate on cedar ties from Gladwin, Mich., to Chicago, Ill., than on other forest products.
1165. Excessive charges on merchandise shipped from Schenectady, N. Y., to Rosslyn, Va.
1166. Discrimination in rates on mattresses in favor of Atlanta, Ga., as against Pelzer, S. C.

- 1167. Higher rate on wool boots from Hastings, Mich., to Boston, Mass., than is charged on similar shipments in the opposite direction.
- 1168. Same as 1085.
- 1169. Protest against proposed change in Official Classification.
- 1170. Protest against proposed change in Official Classification.
- 1171. Discrimination in billing freights.
- 1172. Protest against proposed change in Official Classification.
- 1173. Discrimination against Jasper, Ala., in oils and axle grease shipped from Cincinnati, Ohio, in favor of Fayette, Cullman, and New Decatur, Ala.
- 1174 to 1499, inclusive:

These 326 complaints alleged that unlawful changes were about to be made in the Official Classification by the carriers using that classification, and that a new classification embodying such changes was to be put into effect on or about January 1, 1900; that numerous existing commodity rates were also to be canceled by such carriers at about the same time, thereby wrongfully raising the rates upon the articles to which such commodity rates applied, and that by such changes in classification and rates the difference between carload and less than carload rates on a large number of articles would be unlawfully increased.

- 1500. Unlawful practices in the operation of private car lines.
- 1501. Excessive rates on beer in carloads from Milwaukee, Wis., to Dillon, Mont., as compared with Butte, Mont.
- 1502. Higher rates on iron bells from Cincinnati, Ohio, to Chattanooga, Tenn., than those on similar shipments in the opposite direction between the same points.
- 1503. Discriminating rates on machinery from Erie, Pa., to Plaquemine, La., as compared with rates from Milwaukee, Wis., and New Albany, Ind.
- 1504. Discrimination against Arlington, Ga., in rates on scrap iron to Birmingham, Ala., in favor of Blakely, Ga.
- 1505 to 1522, inclusive.

Same as 1174 to 1499.

- 1523. Discriminating rates on melons from Pidcock, Ga., to Poughkeepsie, N. Y., in favor of Albany, Troy, and other New York points.
- 1524. Discrimination in classification and rates on melons and cantaloupes against Florida and in favor of Georgia, Carolina, Texas, and Colorado.
- 1525. Unlawful rates on milk from points in Pennsylvania to New York City.
- 1526. Higher charge on stoneware from White Hall, Ill., to Marshfield, Mo., than for the longer distance to Springfield, Mo.
- 1527. Refusal to give rates on coal from Pocahontas district, Virginia, to Eastern cities.
- 1528. Discriminating rates on farm wagons in carload lots from Fairfield, Iowa, in favor of Oklahoma City and against Guthrie, Perry, and Ponca City, Okla.
- 1529. Unreasonable and unjust freight rates from Fitzgerald and other points in Georgia.
- 1530. Higher rates to Detroit and other points between Texarkana, Ark., and Paris, Tex., than are charged to Paris.
- 1531. Excessive charges on motor carriage from Kokomo, Ind., to Spokane, Wash.
- 1532. Unjust discrimination in rates on mantels from Chicago to Baltimore, Md.
- 1533. See 1555.
- 1534. Delay in hauling fruit from Sandoval to other points in State of Illinois.
- 1535. Through rate on barrel heads from Petersburg to Exmore, Keller, Onley, and Bloxom, Va., unlawfully higher than the combination of the local rates to and from Norfolk, Va.
- 1536. Refusal of express company to accept packages consigned to another express company.
- 1537. Excessive advance in switching charges at Glen Jean, W. Va.
- 1538. Overcharge on barrel of salt mullet from Cedar Keys, Fla., to Douglas, Ga.
- 1539. Discrimination in freight rates against Oklahoma City, Okla., in favor of Texas and Kansas common points.
- 1540. Higher rate on pecans, east-bound, between Brownwood, Tex., and Atlanta, Ga., than in opposite direction.
- 1541. Unjust mileage charge from West Chicago to Elgin, Ill.
- 1542. Discriminating rates on yellow-pine lumber from Memphis and other Southern points against Lincoln, Nebr., and in favor of Omaha.
- 1543. Delay in shipment of cotton from Americus, Ga., to Boston, Mass.
- 1544. Higher rate on carpets from Gaffney, S. C., to St. Louis than from Philadelphia to St. Louis.
- 1545. Higher passenger rate from Cambridge City, Ind., to Louisville, Ky., and New Albany, Ind., than is charged from Richmond, Ind., to same destinations.
- 1546. Excessive demurrage charge.

1547. Advance in rates on cutter bodies from Lowell, Mich., to Elkhart, Ind.
1548. Discrimination in rates on horses in carloads from points in Tennessee to Blackstone, Va., as compared with rates to Petersburg or Norfolk, Va.
1549. Refusal to carry freight without prepayment of charges.
1550. Overcharge on spring wagon from Goodlawn, Kans., to Plattville, Colo.
1551. Damage to a shipment of trees between Bloomington, Ill., to Knoxville, Iowa, occasioned by delay in delivery.
1552. Discrimination in rates on wheat from Davis, Ind. T., to Fort Worth and Galveston, Tex., as compared with rates from Ardmore, Ind. T., to same destinations.
1553. Excessive charge on small shipments from Dallas, Tex., to Rush Springs, Ind. T., as compared with the rate from Fort Worth, Tex., to same destination.
1554. Excessive rate on cotton from Batesville to Memphis, Tenn.
1555. Excessive rate on cotton from Courtland, Miss., to Memphis, Tenn.
1556. Higher rate on flour from Kenyon, Minn., than from St. Paul, Minn., to Chicago, Ill.
1557. Discriminating rates on coal from points in Colorado to Iowa Park as compared with rates to Wichita Falls, Tex.
1558. Unjust classification of horse collars.
1559. Unjust classification of hay in carloads.
1560. Excessive rates from Wickliffe, Ky., to Columbus, Ky., as compared with rate from Cairo, Ill.
1561. Excessive rates on coal from Brockton, Mass., to tidewater.
1562. Excessive rates on tin plate from Chicago, Ill., to Ogden, Utah.
1563. Refusal of railroad inspectors to pass grease billed as axle grease and assessing the higher rate for lubricating compound.
1564. Refusal to receive locomotive and tender for shipment because side-rods had been taken down and boxed.
1565. Higher rates to Kingfisher, Okla., than to Texas common points.
1566. Refusal to quote rates on railroad ties.
1567. Advance in rate from St. Louis to Boston on street cars by increasing the minimum weight of shipment.
1568. Discrimination by lines west of the Mississippi River against clothing shipped in bales.
1569. Discrimination in rates on homing pigeons.
1570. Discrimination in express charges.
1571. Unjust rates on soda ash from Detroit, Mich., to Fostoria, Ohio, in less than carloads as compared with carload rates.
1572. Overcharge on shipment of potatoes from Gilbert, Mich., to Orange, N. J.
1573. Overcharge on shipment of potatoes from Hobart, Mich., to Jacksonville, Fla.
1574. Overcharge on shipment of potatoes from Hobart, Mich., to Orange, N. J.
1575. Overcharge on shipment of potatoes by raising the weight and refusal to give receipt as bill of lading.
1576. Discriminating rates against Dalton, Ga., and in favor of Chattanooga, Tenn., on shipments to Cleveland, and other points in Tennessee.
1577. Excessive charges on a car of wood from Willimantic, Conn., to Boston, Mass.
1578. Rates on stoneware from Red Wing, Minn., to Chicago, Milwaukee, and other points in Illinois and Wisconsin.
1579. Diversion of shipments of produce and beans to Sheridan, Ind., and Macon, Ga., resulting in loss of the freight.
1580. Unlawful rates on wool from points in Wisconsin to New York.
1581. Discriminating against colored passengers in Virginia in matter of separate coaches.
1582. Excessive rate on lumber from Hollins, Ala., to Columbia, Tenn.
1583. Refusal of railroads to give the divisions of a joint rate on shipment of hay from Pana, Ill., to Jacksonville, Fla.
1584. Excessive rates on safes from Brandon, Miss., to Hamilton, Ohio, as compared with rates in opposite direction.
1585. Discriminating export rates on cotton and grain from Caddo, Ind. T., in favor of stations south of Caddo.
1586. Payment of commissions by railroads to freight-soliciting agents.
1587. Violation of law claimed through railroads putting in force a lower rate than that of steamboat line.
1588. Excessive rate on shipment of building paper from St. Paul, Minn., to Red Lodge, Mont.
1589. Unlawful rates on railroad ties from Somerset, Pa., to Pittsburg, Pa.
1590. Refusal to haul logs when prepayment of freight was offered.
1591. Refusal to furnish cars for grain at Hennessey, Okla.
1592. Violation of section 4 in rate on sugar from New Orleans, La., to Morganfield, Ky.

1593. Unlawful charge for a greater mileage than actual distance from Newburyport, Mass., to Portland, Me.
1594. Overcharge on printing paper from Holyoke, Mass., to Montvale, N. J.
1595. Unreasonable rate on cross-ties from Owingsville, Ind., to Peoria, Ill.
1596. Discriminating rates on sugar from San Francisco, Cal., to Hastings, Nebr., as against Omaha, Nebr.
1597. Discriminating rates on peaches from Winchester, Va., to Baltimore, Md., against certain consignees.
1598. False billing of flour from St. Louis to Hazelhurst, Miss., by shipping it as meal.
1599. Unreasonable charge for storage on a trunk at Washington, D. C.
1600. Violation of section 4 in rates on wagons from Springfield, Mo., to points in Arkansas.
1601. Delay of freight shipments to Alburg Springs, Vt.
1602. Erroneous classification of wall plaster in the same class as cement.
1603. Failure to file and post tariff prior to reducing passenger rate to meet rate of steamboat line.
1604. Rebates to Chicago dealers of local charges from Newburyport and other Eastern points to Boston on shipments to Chicago.
1605. Unreasonable rates on shipments of buggies; also that some roads in the South charge on a minimum of 15,000 pounds, while other roads charge on but 3,000 pounds.
1606. Violation of section 4 in rates charged on an engine shipped from Indianapolis, Ind., to Lancing, Tenn.
1607. Rates on flour from St. Louis to Hattiesburg, as compared with rates to Jackson and Meridian, Miss.
1608. Discrimination in freight rates on wagons, buggies, and harness to Ehrhardt, S. C., as compared with rates to Bamberg, S. C.
1609. Railroads at Waukomis, Okla., refuse to supply cars except to the elevators.
1610. Overcharge on lumber shipped from Grassy Lake, Ark., to New York.
1611. Rate on wheat from Winchester, Ky., to New York and other Eastern points as compared with rates from Lexington, Ky.
1612. Overcharge on horses from Chester, Iowa, to Chicago, Ill.
1613. Discrimination in rates on wheat from Beverly, Pa., to Chicago, Ill.
1614. Failure of station agent at Rockport, Ind., to deliver freight shipped from Inverness, Fla.
1615. Excessive express charges on shipments of condensed milk from Goshen, N. Y., to New York City.
1616. Rates charged by express company on peaches.
1617. Refusal to carry boxes containing small packages of advertising matter consigned to agents for reshipment.
1618. Unjust classification of galvanized-steel butcher's tanks as steel tanks.
1619. Discrimination in rates on granite monuments from New England points consigned to Rose Hill Cemetery, within the limits of Chicago, Ill.
1620. Excessive freight charges on baskets from Burlington, Iowa, to Peoria, Ill.
1621. Overcharge in rates on whiting from Philadelphia to Troy, N. Y.
1622. Discrimination in rates on stock cattle from Taylor, Wis., to Ireton, Iowa, in favor of competitors.
1623. Failure to stop trains at Buford, Ga.
1624. Commutation rates between New York and Monmouth Beach, N. J.
1625. Unlawful charge of \$2.10 for the transportation of a bicycle from Boston, Mass., to Chicago, Ill.
1626. Failure to furnish train service on a branch line.
1627. Failure of carrier to protect a contract rate of \$1.51 per 100 pounds on household goods from Wichita Falls, Tex., to Seattle, Wash.
1628. Unlawful rates on pickles from Kansas City, Mo., to Leadville, Colo.
1629. Rates on apples in carloads from Barada, Mich., to Chicago, Ill., as compared with rates on like shipments from Three Oaks, Mich., to Chicago, Ill.
1630. Overcharge on shipments of coal from Norton and Stone Gap, Va., to Lexington and other points in Kentucky.
1631. Unlawful rates on coal from Alabama points to Natchez, Miss.
1632. Discrimination in shipments of coal to Rosslyn, Va., when coming from points on a connecting road.
1633. Rates on bar iron from Birmingham, Ala., to Cedartown, Ga.
1634. Discrimination in allowing agents of certain shippers to ride free on freight trains, while others are charged full fare.
1635. Refusal to furnish cars for the loading of hay at Fairfield and other points in Indian Territory.
1636. Excessive rate on shingles and lumber from Fort Fairfield, Me., to Providence, R. I.

1637. Refusal to furnish cars for shipments of flour, etc., to New Orleans, La., and other Southern points.
1638. Refusal of carrier to furnish a sufficient number of coal cars to enable shipper to do business without a loss.
1639. Discriminating in privileges granted to commercial travelers.
1640. Excessive freight rates on cement from Siegfried, Pa., to Hagerstown, Md., as compared with the rate from Siegfried to Norfolk, Va.
1641. Refusal to furnish rates on coal shipments to Missouri points.
1642. Rates on coal from New River district, W. Va., to Charleston, S. C.
1643. Refusal to give rate on standard cedar ties.
1644. Excessive charge of 50 cents by express company on a valise from Kansas City, to Craig, Mo.
1645. Overcharge on hay shipped from Tryonville, Pa., to Kanesholm, Pa.
1646. Irregular routing of interstate shipments of sawmill products.
1647. Excessive charge on a horse and wagon from New Orleans to New York City by steamer.
1648. Unjust classification of blacking daubers as brushes.
1649. Irregular routing of lumber from Dover, N. C., to points on the Round Hill Branch of the Southern Railway.
1650. Unjust rates for the shipment of coal from Pennsylvania points.
1651. Overcharge on a buggy shipped from Garrison, Iowa, to La Platte, Mo.
1652. Unreasonable rates on shipments of scrap iron from Fort Wayne to Muncie, Ind., as compared with rates from Indianapolis.
1653. Unlawful charge on 18 crates of rockers from South Bend, Ind., to Temple, Tex.
1654. Unjust minimum weight charged on steamship lines between Honolulu, H. I., and the United States.
1655. Overcharge on mixed shipment of stovepipe elbows and stoves to El Paso, Tex.
1656. Overcharge on shipments of rosin, tar, and pitch.
1657. Excessive charges on a piano shipped from Oberlin, Ohio, to Minneapolis, Kans.
1658. Overcharge on shipment of household goods from Salem, Ohio, to Tacoma, Wash.
1659. Discrimination in rates on silicate of soda in barrels to Pittsburg, Pa.
1660. Refusal to haul 23 doors weighing 805 pounds in excess of carload at the carload rate.
1661. Excessive charge of \$1 per ton for coal in carloads from Warrior to Cullman, Ala.
1662. Discrimination in rates on coal from the Ohio coal fields to Wakaruso, Ind., as compared with rates to competing towns.

APPENDIX D.

CASUALTIES TO RAILWAY EMPLOYEES.

CASUALTIES TO RAILWAY EMPLOYEES.

RAILWAY EMPLOYEES KILLED AND INJURED FROM ALL CAUSES.

Item.	1893.	1894.	1895.	1896.	1897.	1898.	1899.	1900. ¹
Employees killed from—								
Coupling and uncoupling.....	433	251	291	229	214	279	260	281
Falling from trains and engines.	644	439	452	472	408	473	459	527
Overhead obstructions.....	73	50	52	63	42	51	45	56
Collisions	247	145	134	178	164	180	187	263
Derailments	153	108	132	117	139	133	147	197
Other train accidents	125	85	42	53	46	53	45	77
At highway crossings.....	32	16	17	24	23	21	19	20
At stations	117	93	92	92	61	54	83	113
Other causes	903	636	599	633	596	714	965	1,006
Total.....	2,727	1,823	1,811	1,861	1,693	1,958	2,210	2,540
Employees injured from—								
Coupling and uncoupling.....	11,277	7,240	8,137	8,457	6,283	6,988	6,765	5,211
Falling from trains and engines.	3,780	2,869	3,297	3,898	3,627	3,859	3,970	4,415
Overhead obstructions.....	444	407	343	358	375	397	426	433
Collisions	1,491	894	1,008	1,047	943	1,071	1,368	1,573
Derailments	867	648	701	659	709	732	785	874
Other train accidents	650	470	434	486	462	490	578	698
At highway crossings.....	43	46	57	160	33	48	38	53
At stations	1,258	1,100	1,330	1,471	1,388	1,957	2,139	2,570
Other causes	11,919	9,748	10,389	13,433	13,847	16,219	18,854	23,744
Total.....	31,729	23,422	25,696	29,969	27,667	31,761	34,923	39,571

¹ Advance figures, slightly incomplete and subject to revision.

RAILWAY EMPLOYEES KILLED AND INJURED IN COUPLING AND UNCOUPLING CARS.

Class of employees.	Coupling and uncoupling cars.						
	Year ending June 30.	Employed. ²		Killed.		Injured.	
		Number on June 30.	Increase or decrease.	Number.	Increase or decrease.	Number.	Increase or decrease.
Trainmen	1900	.....	.....	187	+ 7	3,788	-1,267
	1899	178,851	+ 8,143	180	- 2	5,055	- 235
	1898	170,708	+ 9,311	182	+ 35	5,290	+ 592
	1897	161,397	- 1,479	147	- 10	4,698	-1,759
	1896	162,876	+ 5,145	157	- 32	6,457	+ 320
	1895	157,731	- 2,302	189	+ 8	6,077	+ 538
	1894	160,033	-19,603	181	-129	5,539	-3,214
	1893	179,636	+10,376	310	+ 57	8,753	+ 987

² Data for men employed on June 30, 1900, not available at date of report. (See also note 1.)

RAILWAY EMPLOYEES KILLED AND INJURED IN COUPLING AND UNCOUPLING CARS—Continued.

Class of employees.	Coupling and uncoupling cars.						
	Year ending June 30.	Employed. ¹		Killed.		Injured.	
		Number on June 30.	Increase or decrease.	Number.	Increase or decrease.	Number.	Increase or decrease.
Switchmen, flagmen, and watchmen.....	1900	-----	-----	77	+ 3	1,261	- 272
	1899	48,686	+ 1,562	74	- 16	1,533	+ 47
	1898	47,124	+ 3,356	90	+ 32	1,486	+ 161
	1897	43,768	- 498	58	-----	1,325	- 361
	1896	44,266	+ 1,108	58	- 32	1,686	- 140
	1895	43,158	- 61	90	+ 27	1,826	+ 334
	1894	43,219	- 2,829	63	- 46	1,492	- 798
	1893	46,048	+ 3,156	109	- 6	2,290	+ 38
Other employees	1900	-----	-----	17	+ 11	162	- 15
	1899	701,387	+44,661	6	- 1	177	- 35
	1898	656,726	+38,415	7	- 2	212	- 48
	1897	618,311	- 1,167	9	- 5	260	- 54
	1896	619,478	+35,333	14	+ 2	314	+ 80
	1895	584,145	+ 7,789	12	+ 5	234	+ 25
	1894	576,356	-71,562	7	- 7	209	- 25
	1893	647,918	+38,655	14	+ 4	234	- 67
Total	1900	-----	-----	281	+ 21	5,211	-1,554
	1899	928,924	+54,366	260	- 19	6,765	- 223
	1898	874,558	+51,082	279	+ 65	6,988	+ 705
	1897	823,476	- 3,144	214	- 15	6,283	-2,174
	1896	826,620	+41,586	229	- 62	8,457	+ 320
	1895	785,034	+ 5,426	291	+ 40	8,137	+ 897
	1894	779,608	-93,994	251	-182	7,240	-4,037
	1893	873,602	+52,187	433	+ 55	11,277	+ 958

¹ Data for men employed on June 30, 1900, not available at date of report. (See also note 1, preceding page.)

RAILWAY EMPLOYEES KILLED AND INJURED IN COUPLING AND UNCOUPLING CARS.

Year ending June 30.	Trainmen. ¹			Switchmen, flagmen, and watchmen.		
	Number employed on June 30, excepting enginemen and firemen.	Killed.	Injured.	Number employed on June 30.	Killed.	Injured.
1900	-----	187	3,788	-----	77	1,261
1899	97,729	180	5,055	48,686	74	1,533
1898	93,844	182	5,290	47,124	90	1,486
1897	88,995	147	4,698	43,768	58	1,325
1896	90,263	157	6,457	44,266	58	1,686
1895	87,497	189	6,077	43,158	90	1,826
1894	88,240	181	5,539	43,219	63	1,492
1893	100,496	310	8,753	46,048	109	2,290
1892	94,774	253	7,766	42,892	115	2,252
1891	89,060	288	7,155	40,457	111	2,044
1890	85,247	265	6,073	37,669	75	1,528
Total	-----	2,339	66,651	-----	920	18,723

¹ Enginemen, firemen, conductor, and other trainmen.

RAILWAY EMPLOYEES KILLED AND INJURED IN COUPLING AND UNCOUPLING CARS—Continued.

Year ending June 30.	Other employees.		Number of trainmen employed, excepting enginemen and firemen, to one trainman—		Number of switchmen, flagmen, and watchmen employed to one—	
	Killed.	Injured.	Killed.	Injured.	Killed.	Injured.
1900	17	162	.....	.....	.....	.....
1899	6	177	543	19	658	32
1898	7	212	516	18	524	32
1897	9	260	605	19	755	33
1896	14	314	575	14	763	26
1895	12	234	463	14	480	24
1894	7	209	488	16	686	29
1893	14	234	324	12	422	20
1892	10	301	375	12	373	19
1891	16	232	309	12	364	20
1890	29	241	322	14	502	25
Total	141	2,576	.....	.....	.....	.....

RAILWAY EMPLOYEES KILLED AND INJURED THROUGH FALLING FROM TRAINS AND ENGINES.

Year ending June 30.	Trainmen. ¹			Switchmen, flagmen, and watchmen.		
	Number employed on June 30.	Killed.	Injured.	Number employed on June 30.	Killed.	Injured.
1900 .....	.....	410	3,354	.....	45	497
1899	178,851	337	3,053	48,686	60	377
1898	170,708	356	2,979	47,124	50	359
1897	161,397	325	2,726	43,768	32	357
1896	162,876	373	3,115	44,266	42	330
1895	157,731	343	2,543	43,158	49	363
1894	160,033	344	2,203	43,219	42	274
1893	179,636	507	2,984	46,048	50	321
1892	169,260	485	2,540	42,892	45	342
1891	160,138	467	2,494	40,457	55	300
1890	153,235	456	1,838	37,669	32	213
Total .....	.....	4,403	29,829	.....	502	3,733

Year ending June 30.	Other employees.		Number of trainmen employed to one—		Number of switchmen, flagmen, and watchmen employed to one—	
	Killed.	Injured.	Killed.	Injured.	Killed.	Injured.
1900	72	564	.....	.....	.....	.....
1899	62	540	531	59	811	129
1898	67	521	480	57	942	131
1897	51	544	497	59	1,368	123
1896	57	453	437	52	1,054	134
1895	60	391	460	62	881	119
1894	53	392	465	73	1,029	158
1893	87	475	354	60	921	143
1892	81	362	349	67	953	125
1891	76	397	343	64	736	135
1890	73	312	336	83	1,177	177
Total	739	4,951	.....	.....	.....	.....

¹ Enginemen, firemen, conductors, and other trainmen.

RAILWAY EMPLOYEES KILLED AND INJURED FROM OVERHEAD OBSTRUCTIONS.

Year ending June 30.	Trainmen. ¹			Switchmen, flagmen, and watchmen.		
	Number employed on June 30, excepting enginemen and firemen.	Killed.	Injured.	Number employed on June 30.	Killed.	Injured.
1900 .....	.....	47	373	.....	3	42
1899	97,729	39	349	48,686	3	49
1898	93,844	46	335	47,124	3	37
1897	88,995	35	307	43,768	5	15
1896	90,263	57	304	44,266	2	33
1895	87,497	42	294	43,158	1	27
1894	88,240	44	353	43,219	4	31
1893	100,496	66	396	46,048	3	36
1892	94,774	75	353	42,392	1	25
1891	89,060	72	357	40,457	3	25
1890	85,247	81	313	37,669	3	18
Total .....	.....	604	3,734	.....	31	338

Year ending June 30.	Other employees.		Number of trainmen employed, excepting enginemen and firemen, to one trainman—		Number of switchmen, flagmen, and watchmen employed to one—	
	Killed.	Injured.	Killed.	Injured.	Killed.	Injured.
1900	6	18	.....	.....	.....	.....
1899	3	28	2,506	280	16,229	994
1898	2	25	2,040	280	15,708	1,274
1897	2	53	2,543	290	8,754	2,918
1896	4	21	1,584	297	22,132	1,341
1895	9	22	2,083	298	43,158	1,598
1894	2	23	2,006	250	10,805	1,394
1893	4	12	1,523	254	15,349	1,279
1892	4	22	1,264	268	42,892	1,716
1891	3	30	1,237	249	13,486	1,618
1890	5	14	1,052	272	12,556	2,093
Total	44	268	.....	.....	.....	.....

¹ Enginemen, firemen, conductors, and other trainmen.

SWITCHMEN, FLAGMEN, AND WATCHMEN.

Accurate returns made to the secretary last year from more than one-third of the railroad mileage of the United States, including systems operating in every group, show the proportions of switchmen, flagmen, and watchmen to be about 6, 3, and 2, respectively. The total number of switchmen, flagmen, and watchmen reported in the last statistical report of the Commission was 48,686. According to the proportions above found, there are 26,556 switchmen, 13,278 flagmen, and 8,852 watchmen.

STATEMENT OF CONDITIONS AND RESULTS FOR YEARS 1893 AND 1899.

The following table shows the conditions and results for the year 1893, when the law took effect, and for the year 1899:

	1893.	1899.
Number of cars in freight service.....	1, 013, 307	1, 295, 510
Number of locomotives in freight service.....	18, 599	20, 728
Number of tons carried	745, 119, 482	959, 763, 583
Number of tons carried 1 mile	93, 588, 111, 833	123, 667, 257, 153
Average number of tons in train.....	184	243
Number of trainmen employed (other than enginemen and firemen), including switchmen, flagmen, and watchmen	146, 544	146, 415
Number of tons carried for each trainman employed, etc	5, 085	6, 555
Number of tons carried 1 mile for each trainman employed, etc	638, 635	844, 635
Number of freight cars for each trainman employed, etc.....	7	9
Number of train miles run for each trainman employed, etc.....	5, 764	5, 892
Number of enginemen and firemen employed.....	79, 140	81, 122
Number of switchmen, flagmen, and watchmen employed.....	46, 048	48, 686
Number of trainmen employed in coupling and uncoupling cars for each one killed (other than enginemen and firemen), including switchmen, flagmen, and watchmen	349	576
Number of trainmen employed in coupling and uncoupling cars for each one injured (other than enginemen and firemen), including switchmen, flagmen, and watchmen	13	22

APPENDIX E.

STATISTICS OF RAILWAYS IN THE UNITED STATES. REPORT FOR YEAR ENDING JUNE 30, 1899.

NOTE.—The report embraced in this appendix is published as a separate document.

APPENDIX F.

PRELIMINARY REPORT ON THE INCOME ACCOUNT OF
RAILWAYS IN THE UNITED STATES FOR
THE YEAR ENDING JUNE 30, 1900.

NOTE.--The report embraced in this appendix is published as a separate document.

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